**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: PA/08877/2016

**THE IMMIGRATION ACTS**

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| **Heard at Field House** | **Decision & Reasons Promulgated** |
| **On 18 July 2017** | **On 3 August 2017** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**[R R]**

**~~(ANONYMITY DIRECTION NOT MADE)~~**

Respondent

**Representation:**

For the Appellant: Mr C Avery, Home Office Presenting Officer
For the Respondent: No appearance

**DECISION AND REASONS**

**Introduction**

1. The appellant is an Indian national born on [ ] 1986. She entered the UK as a Tier 4 Student on 20 September 2012 with valid leave until 6 January 2014. It was not until two years later that she claimed asylum in Croydon on 26 January 2016. The appellant claimed to have met a British Muslim man called Saleem Butt, to whom she had fallen pregnant and with whom

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she had a child. She claimed that given her background in India she would be subject to serious mistreatment or killed if she returned there.

## The Reasons for refusal

2. The respondent considered her application but set out in a detailed letter of refusal dated 8 August 2016, spanning over 100 paragraphs, her reasons for refusal. The respondent did not accept the appellant's account of having been allegedly persecuted whilst in India.

3. The respondent considered the claim against the background of the relevant case law including the case of **Karanakaran [2000] EWCA Civ 11**. Whilst it was accepted that the appellant had given birth to a daughter with her partner, the respondent did not accept that the appellant would suffer such ill-treatment at the hands of her family or that such treatment would amount to persecution falling within the UN Convention relating to the status of Refugees 1951 (the Refugee Convention). The respondent also considered the case under the European Convention on Human Rights 1950 (ECHR) but did not consider that the appellant would be subject to honour killing or would suffer inhuman and degrading treatment which would cross the threshold required by Article 3 if she returned to India, her country of birth.

4. The appellant was a primary carer for her child but it was clear from the objective evidence produced by the respondent that such persons would be subject to possible assistance from NGOs in India and that overall the Indian state can provide the appellant with a sufficient degree of state protection if she returned there.

5. The respondent in the alternative considered the possibility of internal relocation and noted that the Immigration Rules (339O) provided that where a person had a well-founded fear of persecution in their own country, but could be reasonably expected to move to a different part of that country, they would not in the circumstances be entitled to either protection under the Refugee Convention or to humanitarian protection within the UK. Nor, for that matter, would they be entitled to the protection afforded by the E C H R.

6. The respondent noted that India was one of the largest countries in the world with a large and diverse population spread out over different areas and, a variety of different religions existed side by side, including many Muslims. The respondent suggested that there are a large number of areas to which the appellant could safely relocate well away from her own family, should she feel at risk in her home area. The respondent also considered her private and family life and whether there were any exceptional reasons for allowing her to remain in the UK on that basis but concluded that she could continue her family life in India where she could, if necessary, avail herself of the protection of the state and non-governmental organisations which were available to assist her.

## The appeal proceedings

7. The appellant appealed the refusal by a notice of appeal to the First-tier Tribunal which was received on 22 August 2016. Her appeal came before Judge of the First-tier Tribunal Aziz (the Immigration Judge) sitting at Hatton Cross on 5 December 2016. There are some somewhat unusual mistakes within the decision and some inconsistencies but, essentially, the Immigration Judge concluded that the treatment that the appellant would be reasonably likely to receive at the hands of her family would amount to “discrimination” rather than persecution. However, the Immigration Judge went on to allow the appeal. His decision was promulgated on 12 January 2017.

8. The respondent appealed to the Upper Tribunal against that decision and Judge Osborne considered that the grounds were at least arguable, noting that the question of discrimination, which seemed to be the finding of the judge and the main reason why he allowed the appeal in paragraph 67, was not the test for a successful application as a refugee and he did not understand the conclusion that internal relocation would not be available to her. There was no arguable basis for finding a fear of persecution based on the findings of the Immigration Judge.

## Discussion

9. The Immigration Judge did not fully indicate the basis on which he allowed the appeal, but it is stated in paragraph 67 that the appellant qualified as a refugee, alternatively, that she was entitled to humanitarian protection in the UK. As Judge Osborne pointed out, it was necessary for the Immigration Judge to make a finding that the appellant was in fear of persecution if she were returned to India before the appellant could qualify under the Refugee Convention. Far from making such a finding, Immigration Judge considered that the appellant would be able to seek assistance from one of one of the many government/NGO run shelters for women in the same paragraph. Such a finding is completely at odds with the finding that the appellant was a refugee.

10. The Immigration Judge purported to consider the internal relocation in the same paragraph. He said that in the light of the findings the material question is whether internal relocation would be unduly harsh and he came to an overall finding that the appellant was an educated woman.

    > “There is no reason why she should not be able to seek assistance from one of the many government/NGO-run shelters for women. However, any such help would be temporary. Once she leaves the shelter her background qualifications and experience may well assist her when applying for work.”

    He then stated that:

> "Her situation is compounded by the fact that her small child had been born out of wedlock…"

He concluded, in the circumstances, that to put the appellant in a position that she would be in would be unduly harsh and internal relocation would not be a viable option.

**Conclusions**

11. I have carefully considered the grounds of appeal put forward by the respondent and I have concluded that they are correct. The Immigration Judge's findings of fact do not match the conclusions in law which he reached. In particular, the appellant produced no evidence that she would be subject to persecution if she were returned to India with her young child, as opposed to discrimination and possible ostracization. With respect, the Immigration Judge failed to identify that persecution is the pursuit of a person with malignancy. Furthermore, the Immigration Judge failed to identify the correct test for internal flight which was: whether internal relocation was an alternative to seeking international protection reasonably available to the appellant or whether it was unduly harsh to expect her to do this. The fact that the appellant had a small child did not mean it would be unduly harsh for the appellant to relocate to a different part of India. As the Immigration Judge himself pointed out, in paraphraph 67 of his decision, there were NGO-run shelters to which the appellant could go where she would be perfectly safe. It follows therefore that she could internally relocate even if the treatment which claims to fear from, and which crossed the threshold for persecution, were to occur.

12. I therefore find that there was a material error of law in the decision of the First-tier Tribunal in that the Immigration Judge allowed the appeal in circumstances where his own findings did not support that conclusion. That error of law means that the decision of the First-tier Tribunal must be set aside.

13. The Immigration Judge made clear findings of fact in relation to the availability of NGOs and other shelters for single women in India. There were also opportunities for relocation within India. Many of the barriers to this, such as the appellant's need to balance employment caring for a small church child, are only examples of the difficulties many single parents face in bringing up a young child and not in any way amount to it being unduly harsh to expect the appellant to relocate. It follows that even if the appellant were a person who qualified as a refuge/a person in need of humanitarian protection, or a person who would suffer a serious risk of death or inhuman and degrading treatment in India, the respondent did not did not owe any obligation in international law to her due to the availability of internal relocation within India.

14. In the circumstances, it is appropriate to substitute the decision of the Upper Tribunal, which is to dismiss the appeal against the Secretary of State's refusal in this case.

**Notice of Decision**

The respondent's appeal against the decision of the First-tier Tribunal is allowed. That decision is set-aside. The following decision is substituted: The appellant's appeal against the respondent's decision to allow her application for asylum is dismissed as is her appeal under the ECHR. The appellant's appeal against the respondent's decision to refuse her humanitarian protection is also dismissed.

No anonymity direction is made.

Signed Date 2 August 2017

Deputy Upper Tribunal Judge Hanbury

**TO THE RESPONDENT**
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 2 August 2017

Deputy Upper Tribunal Judge Hanbury