Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number PA/05928/2016

THE IMMIGRATION ACTS

Heard at Centre City Tower
On 19th March 2018

Decision and Reasons Promulgated
On 10th May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

H N
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Pipe (Counsel, instructed by Law and Justice Solicitors)
For the Respondent: Mr D Mills (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a citizen of Pakistan, she arrived in the UK in August 2015 and claimed asylum on the 1st of December 2015. The application was on the basis that as a single woman who had had a child outside marriage she would be at risk in Pakistan. The application was rejected for the reasons given in the Refusal Letter of the 26th of May 2016. The Appellant's appeal was heard by First-tier Tribunal Judge

Phull at Birmingham on the 16th of March 2017 and dismissed for the reasons given in the decision promulgated on the 12th of April 2017.

2. The Judge found that the Appellant's claim to have had a relationship outside marriage was not credible. The Judge set out her reasons at paragraphs19 to 35 of the decision. The Judge found that the Appellant's claim to have had a child out of wedlock was not credible, there were a number of inconsistencies in the Appellant's evidence, the evidence did not show that any action had been taken against the Appellant even though the family and her fiancé apparently knew of the relationship. The lack of action by the family was contrary to the evidence on honour killings.

3. The Appellant sought permission to appeal to the Upper Tribunal from the First-tier Tribunal. First-tier Tribunal Judge Pooler decided that the grounds did not disclose an arguable error of law. The reference to a reasonable likelihood in paragraph 34 had to be seen against the correct self-direction in paragraph 4 and in paragraph 22 expressed her findings appropriately. The high threshold for irrationality was not crossed.

4. The grounds were renewed to the Upper Tribunal arguing that paragraph 34 was a material misdirection of law, there was no contradiction between the method of entry interview and the asylum interview, the lack of action against Aziz did not mean the Appellant was not at risk, if the child was not born out of wedlock why would the Appellant come to the UK and had not considered the welfare of the Appellant's child - primary consideration. Permission was granted by Upper Tribunal Judge Plimmer who stated it was arguable that the standard of proof had been inverted in paragraph 34 and all the grounds were arguable.

5. At the hearing Mr Pipe submitted that the complaint was about how the standard of proof had been applied, referring to paragraphs 32 and 29. Reliance was placed on footnote 5 of page 22 of Asylum Law and Practice (2nd ed) and the case of Demirakaya. This was not a single usage and was not peripheral. The lack of action taken against Aziz did not assist with assessing the risk to the Appellant which would manifest itself on return. The approach to the method of entry questionnaire and the asylum interview was flawed. If the findings were correct why claim in the UK if the child was not born out of wedlock? Article 8 had not been raised and section 55 would be considered within that framework.

6. For the Home Office Mr Mills observed that there was an obvious problem with paragraphs 32 and 34. All he could say was that the decision should be read as a whole, paragraphs 4 and 36 stated the burden in the correct terms and did not suggest an inversion. He went on to submit that the remaining grounds had little weight in them. The method of entry findings did not stand alone as a single point, the lack of action against Aziz was part of the assessment of the consistency with background evidence and the Judge was entitled to find that the claim was not consistent. The 4th ground invited speculation, the simple fact was that the Judge found that the claim was not proved to go further would have involved speculation

and would have been an error. Given the findings there would be no basis for finding that they could not return to Pakistan and there was nothing in the best interests point.

7. Guidance on the approach to the assessment of decision was given by Burnett LJ in EA v SSHD [2017] EWCA Civ 10 at paragraph 27 where he made the following observations: *"Decisions of tribunals should not become formulaic and rarely benefit from copious citation of authority. Arguments that reduce to the proposition that the F-tT has failed to mention dicta from a series of cases in the Court of Appeal or elsewhere will rarely prosper. Similarly, as Lord Hoffmann said in Piglowska v Piglowski [1999] 1 WLR 1360, 1372, "reasons should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and which matters he should take into account". He added that an "appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which enables them to claim that he misdirected himself". Moreover, some principles are so firmly embedded in judicial thinking that they do not need to be recited. For example, it would be surprising to see in every civil judgment a paragraph dealing with the burden and standard of proof; or in every running down action a treatise, however short, on the law of negligence. That said, the reader of any judicial decision must be reassured from its content that the court or tribunal has applied the correct legal test to any question it is deciding."*

8. The Judge correctly referred to the lower standard of proof in her self-directions at paragraph 4 and in the brief summary of the rejection of the Appellant's claim in paragraph 36 of the decision. The section of the decision setting out the Judge's findings starts at paragraph 17 with the main findings set out from paragraph 23 onwards. The findings start with the answers given in interview and then focus on the background evidence relating to honour based violence in Pakistan.

9. The discussion in paragraphs 25 to 32 included consideration of the background evidence relating to honour killings, the attitude of families that perceived that they had been dishonoured and the danger to those suspected of bringing dishonour on a family. The danger was to the family's daughter and the man involved in the suspected or actual relationship. The Judge considered the evidence from the Appellant's interview and the evidence given at the hearing. Given the background evidence showing that the man would be in real danger the absence of any evidence to show action had been taken against Aziz was something which the Judge attached significant weight to.

10. The parts of the decision which have attracted the most significant concern are to be found at the end of paragraph 32 and paragraph 34. Paragraph 32 having noted the lack of adverse action against Aziz ends with these words "which I find suggests that there is a reasonable likelihood that this is because the child was not born out of wedlock, as claimed."

11. Paragraph 33 is a further discussion of the attitude of the Appellant's family and the situation of Aziz and the lack of action against him. That was followed by paragraph 34 which states "I find this is because there is a reasonable likelihood that the

appellant did not have a relationship with Aziz outside or (sic) marriage or give birth to a child out of wedlock."

12. The sentences in paragraphs 32 and 34 are to the same effect, paragraph 34 repeating the earlier statement, summarising the conclusion drawn from the preceding analysis. Not happily worded paragraph 34 adds nothing to paragraph 32. There is nothing in the preceding discussions that shows that the Judge was applying an inappropriate standard of proof in the manner that the evidence was being considered. The Judge correctly set out the burden and standard and summarised her findings in paragraph 36 appropriately.

13. The decision has to be read as a whole without taking matters out of context or applying "narrow textual analysis". Having regard to the guidance set out above and in taking a holistic view of the decision I am satisfied that, although not happily worded, the decision shows that the Judge was applying the correct standard of proof and that there is no error of law within the decision made. Paragraphs 32 and 34 are the same point repeated and against the discussion conducted by the Judge cannot be said to be material.

14. The subsidiary grounds of application are without foundation. The complaint about the weight placed on the method of entry interview and the Appellant's main interview are not a significant part of the reasoning of Judge Phull and the Judge was entitled to have regard to the differences. The lack of action taken against Aziz was clearly relevant as, according to background evidence, he too would have been at risk – the lack of interest in him was an indication of the attitude of the family which raised the issue for the Judge to consider. The welfare of the Appellant's child stood or fell with the principal findings of the Judge.

15. Having found that the Appellant was not at risk any other findings on motivation would have been unnecessary and unjustified, had such findings been made then the complaint would have been that the Judge had speculated without foundation. The principal function of the Judge was to find whether the claim was credible to the lower standard, having found it was not it was not then necessary for the Judge to go further. The findings of the Judge in this regard were open to her for the reasons given and do not demonstrate any errors.

16. For the reasons given above I find that the decision of Judge Phull was not affected by any material error of law and it stands as the disposal of the Appellant's appeal.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal made 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 dismissing this appeal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 23rd March 2018