



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/09041/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 17th January 2018

Promulgated

On 15th February 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MS A P

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Antonia Benfield, Counsel instructed by Wimbledon Solicitors

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The application for permission to appeal was made by the Secretary of State nonetheless I shall refer to the parties as they returned before the First-tier Tribunal that Ms AP as the appellant and the Secretary of State as the respondent.
2. The appellant is a citizen of Pakistan born on 1st January 1980 and she arrived in the UK on 16th January 2011 with entry clearance as a student.

Her husband arrived as her dependant. On 9th February 2016 she claimed asylum and that was refused by the Secretary of State on 8th August 2016 for reasons set out in a decision by First-tier Tribunal Judge Boardman. In essence the appellant stated she had married someone secretly while her father was trying to force her to marry someone else and with the assistance of her aunt travelled to the UK in 2011. In 2013 her husband left her and she could not contact him. In 2015 the appellant's father found out about the marriage and threatened her. She now understood that her husband had returned to Pakistan but she feared being killed by her family should she return. It was also presented that she had an immune system disorder and depression.

3. Following the hearing on 10th April 2017 the First-tier Tribunal allowed the appellant's claim and the Secretary of State appealed on the following grounds.

Ground (i)

4. The judge failed to give adequate reasons why the appellant could not internally relocate or could in the alternative avail herself of sufficiency of protection.
5. It was submitted that the refusal letter did not state that the appellant's account was internally and externally consistent with the background material and the refusal letter also considered **SM (lone women - ostracism) CG [2016] UKUT 67 (IAC)** and it was noted that the appellant would be able to internally relocate.
6. At paragraph 35 of the decision under challenge the appellant's submissions argued that applying **SM** the appellant was unable to relocate but at paragraph 38 of the determination did not deal with the alternative arguments put forward. At paragraph 38(d) the judge stated "the appellant's evidence about her not having worked is plausible and persuasive" but it was submitted that this was inadequate reasoning in the light of **SM** stating that

'It will not normally be unduly harsh for educated, better off, or older women to seek internal relocation to a city. It helps if a woman has qualifications enabling her to get well-paid employment and pay for accommodation and child care if required'.
7. The Secretary of State's decision was that this appellant was an educated person. It was further submitted that given the arguments put forward it was not clear what the judge meant at paragraph 38(f) in relation to the guidance of **SM**.
8. The refusal letter and arguments advanced by the Secretary of State at the appeal were that there was sufficiency of protection available to the appellant with reference to **KA and Others (domestic violence - risk**

on return) Pakistan CG [2010] UKUT 216 (IAC) and **SM** also made reference to shelters and this had not been addressed by the judge.

Ground (ii)

9. The judge materially erred in law in failing to reason adequately why the appellant's medical conditions prevented her from returning to Pakistan.
10. The refusal letter did address the appellant's medical condition and using background material noted that there was a functioning health service that could deal with the appellant's conditions. At paragraph 38(e) of the determination the judge found that "the appellant's evidence about her medical conditions was corroborated by the reports of Dr Saluja and Dr Hajioff." It was submitted that this finding did not address the arguments put forward by each party. The medical evidence may support that the appellant does have certain conditions but just confirming the conditions did not mean the appellant was unable to return to Pakistan or that it reached the Article 3 threshold.
11. Further at paragraph 38(f) the judge acknowledged the medical reports supporting the appellant's fear of her ability to get a job on return but given the submissions above it was argued that this was inadequately reasoned.

The Hearing

12. At the hearing before me Ms Willocks-Briscoe argued that there was an adequacy of reasons and relied on the grounds as above and indicated that the judge did not engage adequately at paragraph 38 with the country guidance of **SM**. The appellant had qualifications to enter the work force and there was nothing to suggest that she could not seek support from her aunt. Alternatively the appellant could return to a shelter and the judge had not engaged with this argument at all.
13. The judge did not say why the appellant could not access medical facilities if she relocated and all of those factors should have been taken into account. There was no diagnosis that the appellant could not leave the house.
14. Nor was it feasible to consider the claim in relation to sufficiency of protection because the appellant would have to return to her home area and it was accepted that she would be at risk of an honour killing should she return to her home area. Ms Benfield submitted that **SM** applied to this appellant. There was no support from her aunt and it was noted that the appellant's evidence, and regarding the aunt, was not challenged in relation to her essential account. Further there was no challenge to the medical evidence at all. The medical evidence had indicated that this appellant was suffering from PTSD and anxiety and that she would be

returning in a position which would make it difficult for her to find work and to be independent and this was identified in the medical report.

15. Ms Willocks-Briscoe asserted that the judge had not engaged with the submissions of the Home Office at the First-tier Tribunal. Although Article 3 was not pleaded on medical grounds the consideration of the medical report of Hajioff was relevant. She made clear that she had not said that the expert was not qualified. The grounds of appeal were clear that in essence there was a lack of adequacy of reasons. The medical evidence must be considered in the round.

Conclusions

16. Ground (i) A review of the country guidance in relation to women on return to Pakistan was undertaken in **SM (lone women - ostracism) Pakistan CG [2016] UKUT 00067**. This authority identified that in **SM and HM (divorced women - risk on return) Pakistan CG [2004] UKIAT 00283** it was noted that the position in Pakistan for women was unsatisfactory and there was widespread discrimination and insufficient state protection. There had been progress in the previous five years and it was identified that crisis support, however, may be available. The authority identified that internal flight possibilities may be available but each case would depend on its own factual matrix. The questions included whether the claimant had shown a real risk or reasonable likelihood of continuing hostility in her former home area and if she had would she avail herself of any effective protection in her home area from her own family members or from a current partner or his family. The matter moved on and as recorded in **FS (domestic violence - SM and HM - OGN) Pakistan CG [2006] UKAIT 00023**, it was concluded that the background evidence on the position of women at risk of domestic violence in Pakistan and the availability of state protection remained as it was set out in **SM and HM (divorced women)** but the current intention of the authorities was to improve the state protection for women although progress was slow.
17. **KA and Others (domestic violence - risk on return) Pakistan CG [2010] UKUT 216** had identified that there had been legislative measures undertaken to improve the situation in Pakistan in the previous decade which had an effect on the operation on the Pakistan criminal law as it affected women accused of adultery. Once again whether a woman faced a real risk of honour killing would depend on the particular circumstances but was unlikely to impact on married women. This case also identified that there were women's shelters comprising government run shelters and private and Islamic women's crisis centres in general forwarding protection to victims of domestic violence although there were significant shortcomings in the levels of services. In assessing whether women victims of domestic violence had viable internal relocation alternative regard must be had not only to the availability of shelters but also to the situation of women after they left such centres.

18. Finally **SM (lone women - ostracism) Pakistan CG [2016] UKUT 00067** set out at the headnote the following.

- "(1) *Save as herein set out, the existing country guidance in SN and HM (Divorced women - risk on return) Pakistan CG [2004] UKIAT 00283 and in KA and Others (domestic violence - risk on return) Pakistan CG [2010] UKUT 216 (IAC) remains valid.*
- (2) *Where a risk of persecution or serious harm exists in her home area for a single woman or a female head of household, there may be an internal relocation option to one of Pakistan's larger cities, depending on the family, social and educational situation of the woman in question.*
- (3) *It will not be normally be unduly harsh to expect a single woman or female head of household to relocate internally within Pakistan if she can access support from family members or a male guardian in the place of relocation.*
- (4) *It will not normally be unduly harsh for educated, better off, or older women to seek internal relocation to a city. It helps if a woman has qualifications enabling her to get well-paid employment and pay for accommodation and childcare if required.*
- (5) *Where a single woman, with or without children, is ostracised by family members and other sources of possible social support because she is in an irregular situation, internal relocation will be more difficult and whether it is unduly harsh will be a question of fact in each case.*
- (6) *A single woman or female head of household who has no male protector or social network may be able to use the state domestic violence shelters for a short time, but the focus of such shelters is on reconciling people with their family networks, and places are in short supply and time limited. **Privately run shelters may be more flexible, providing longer term support while the woman regularises her social situation, but again, places are limited.***
- (7) *Domestic violence shelters are available for women at risk but where they are used by women with children, such shelters do not always allow older children to enter and stay with their mothers. The risk of temporary separation, and the proportionality of such separation, is likely to differ depending on the age and sex of a woman's children: male children may be removed from their mothers at the age of 5 and placed in an orphanage or a madrasa until the family situation has been regularised (see KA and Others (domestic violence risk on return) Pakistan CG [2010] UKUT 216 (IAC)). Such temporary separation will not always be disproportionate or unduly harsh: that is a question of fact in each case.*

(8) *Women in Pakistan are legally permitted to divorce their husbands and may institute divorce proceedings from the country of refuge, via a third party and with the help of lawyers in Pakistan, reducing the risk of family reprisals. A woman who does so and returns with a new partner or husband will have access to male protection and is unlikely, outside her home area, to be at risk of ostracism, still less of persecution or serious harm."*

19. **SM (lone women - ostracism)** set out the country background reports and evidence and in particular the respondent's Country of Origin Information Guidance from July 2014. This identified at paragraph 1.3.14 that taking into account the general position of women in Pakistan where they faced patriarchal attitudes and deep rooted stereotypes, may not be educated and may have to depend on relatives for economic support and faced safety issues and social constraints in living alone then internal relocation was likely to be unduly harsh but the authority noted that educated and professional women may find it possible to support themselves in alternative locations. In summary the generic country evidence reviewed in **SM (lone women - ostracism)** concluded that despite protective legislation introduced in 2010 and after, sufficient state protection will normally not be available in the home area in circumstances whether real risk of persecution or serious harm has been shown to exist there from the female's applicant family or husband.
20. In this particular case it was clear from the findings of the judge at 38(b) that the respondent had accepted the appellant's account of what had happened to her in Pakistan and that included a description at paragraph 13 that the appellant had been

"Scared for her life as she had already been secretly married on 10th May 2009 to the man of her choice whilst staying at her paternal aunt's house. She had not asked for her father's permission as her community did not accept love marriages, and according to Sharia law a marriage without a father's consent was not considered a valid Islamic marriage and would be treated as adultery and the woman could be stoned to death".

Indeed the reasons for refusal letter confirmed that it was accepted that the appellant's parents attempted to force her into a marriage to settle a land dispute. This was seen as internally and externally coherent with the background material. It seemed that the Home Office accepted that she was at risk of an honour killing and turned immediately in the reasons for refusal to consideration of internal relocation.

21. The judge although in an elliptical account accepted the Appellant's account of what had happened to her in Pakistan and accepted what had happened to her in the UK that being that her husband had left her.
22. In particular the judge identified that her evidence was straightforward consistent internally and consistent with the background information and

detailed. That was the judge's own assessment. As such the judge accepted that the appellant entered a love marriage with her husband without her father's consent and that she and her husband fled to the United Kingdom in 2011 and that furthermore her marriage had broken down because the appellant's family did not accept the marriage and the last contact she had with her husband was at the end of 2013 such that he had returned to Pakistan and remarried. She was in effect single.

23. Although I was invited to consider that the judge should have addressed the issue of sufficiency of protection as set out in the reasons for refusal letter from my citation of **SM (lone women - ostracism)** at paragraph 63 it is clear that sufficient state protection will not normally be available in the home area where there is a real risk of persecution from a female applicant's family or husband and that is certainly the case in this instance. That is made plain by the judge's findings. Although the reasons for refusal letter referred to the various country guidance authorities in relation to sufficiency of protection identified from **KA and Others (domestic violence - risk on return)** that

"The network of women's shelters (comprising government run shelters) (Dar ul-Amans) and private and Islamic women's crisis centres) in general affords effective protection for women victims of domestic violence, although there are significant shortcomings in the level of services and treatment of inmates in some such centres."

24. However, in **SM (lone women)** the Tribunal accepted the evidence of the limited availability of shelters and the scarcity of places. There was no indication in relation to this matter that particular evidence of placements or place within a shelter suitable for the appellant was available and as such I am not persuaded that the judge has failed to address the issue of shelter such that it constitutes an error of law.
25. I am persuaded that the country materials supports the conclusion that state protection is in general unavailable as set out above and that further in relation to shelters there are significant shortcomings in the level of services and treatment that inmates receive and are considered insufficient and temporary such that they are not a substitute for state protection bearing in mind the lower standard of proof,
26. As such with the judge's reference to **SM** and the guidance contained therein, although somewhat of a shorthand I am willing to accept that there is no material error of law in relation to the treatment of sufficiency of protection or in relation to shelters available in her home area or further afield. The judge set out at paragraph 38 of the decision the following.

"The Council of Islamic Ideology had rejected the Women's Protection Act of 2006 as 'not in line with Islamic injunctions' and stated that hudood laws dealt with all offences against women, making a separate law unnecessary. Many civil society activists and law makers were calling for the dissolution of the CII because of its 'regressive decrees'. A number of specific incidents relating

principally to the treatment of young women and of wives by husbands were cited.”

There was a particular criticism of the judge’s conclusions from this paragraph [38] not least that there was a failure of adequate reasoning. The decision is set out unusually and intermittently the decision is set out as bullet points which no doubt is to aid clarity.

27. After some effort the decision is comprehensible based on some considerable cross-referencing in relation to the medical evidence and the application of the factors under **SM [2016]**. The essential headnote of **SM**, as I have set out above, confirms that there may be an internal relocation option.
28. The judge at paragraph 38 referred to **SM** and applying the headnote, which I have cited above, the appellant could not be described as an older woman as she was 37 years old and it was not suggested that she was better off. As submitted the critical question was whether her education would enable her to get a well-paid employment and pay for her accommodation. The judge accepted three critical factors in my view in determining this decision.
29. The first was that the appellant’s account was accepted and this included a recitation at paragraph 30 that “her aunt had asked the appellant not to call again”. Although the judge does not actually state that he/she accepts the appellant’s evidence that is implicit in paragraph 38. The judge at paragraph 38(c) accepted that the appellant’s evidence was consistent and persuasive. Thus it was concluded that the appellant did not have and would not have support of her family on return. Clearly she was single. Secondly that her education would not benefit her in order to come within the exceptions in **SM** because of the medical evidence which was also accepted by the judge. That was not set out in detail in the judge’s decision but the overall report was referred to was paragraph 45 of Dr Hajooff’s expert opinion which was accepted and recorded that

“I believe that although she has a valuable professional qualification the level of her depression with guilt feelings and loss of confidence will make it difficult for her to establish herself and find employment in Pakistan. That will be particularly so in an area away from her family as an independent and unmarried woman”.

30. There was no challenge to the actual medical evidence itself or the conditions cited by the appellant which included chronic depression and PTSD and coeliac disease.
31. It is clear that the judge did accept that the medical condition would have a significant impact on the appellant’s ability to find employment which would in turn might enable her to live independently in Pakistan which is the critical question to be asked. The further question was whether the aspect of the medical facilities available in Pakistan would be available to the appellant on return. However the description of the appellant and her

medical condition needs to be taken as it is at the date of the hearing and that included the fact that

“much of the time she would sit on the floor of her room thinking about what she has been through. She said she feels guilty and blames herself for her present situation. Sitting on the floor seems the appropriate position to take.”

32. The point is that the appellant was receiving medication in the UK and yet still sitting on the floor, and although as identified in the submissions she was no longer receiving counselling the question of her ability to obtain employment and thus support herself was clearly addressed by the judge such that the appellant would not be independent on return. I find there was adequate reasoning.
33. Ground (ii) Further to Nixon (permission to appeal: grounds) [2014] UKUT 00368 (IAC) I give ‘short thrift’ to the points in relation to Article 3. It was not the case that Article 3 was being claimed and appealed on the basis of medical grounds alone. I have, however, addressed the issue of the judge’s overall assessment and reasoning with regard the medical evidence above and how her condition would affect the appellant’s ability to relocate.
34. On reading the decision as a whole and although it was something of an exercise to link the various strands of the determination, which perhaps accounts for the grant of permission to appeal, I am satisfied on a careful reading that there has been a brief explanation for the conclusions on the central issues in line with **Shizad (sufficiency of reasons: set aside) [2013] UKUT 00085 (IAC)**. This authority directs that

“The Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of the law, the fact-finding process cannot be criticised and the relevant country guidance has been taken into account, unless the conclusions of the judge draws from the primary data were not reasonably open to him or her”.

35. It is clear that the primary data could have been more clearly presented in this decision but on the whole the decision makes sense and I find no material error of law and the decision 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 *Helen Rimington*

Date 12th February 2018

Upper Tribunal Judge Rimington