Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/14015/2016

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 15th December 2017	**On 23rd January 2018**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

[N B]
~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr.Wood, Counsel, instructed by IAS[Manchester]
For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India born on [ ] 1987. She applied for a Tier 4 dependent partner visa in April 2010. She came to the United Kingdom upon that visa and leave to remain on that basis was granted until 30th September 2014 and thereafter leave to remain was refused. The appellant exercised her right of appeal against that refusal at a hearing before the First-tier Tribunal in May 2015 in which her appeal was dismissed. On 7th June 2016 the appellant claimed asylum but was refused in a decision of 5th December 2016.

2. The reason for the asylum was the appellant's claimed fear of her parents and in particular the parents of her spouse, given that the relationship with him had broken down because of domestic violence. Seemingly in October 2015 she had contacted the police about his violence towards her which violence continued in May 2016 and he was arrested in May 2016. The appellant was supplied with a social worker and given accommodation away from her husband. Her contention is that her parents do not support her separation from her husband but wish her to return to him and she believes that her parents-in-law will do her harm if she returns.

3. Currently therefore she is a single person with a child born on 4th March 2011.

4. The appellant sought to appeal against the decision, which appeal came before First-tier Tribunal Judge Durance on 19th January 2017. In a subsequent determination the appeal was dismissed on all grounds. It was the finding of the Judge that the appellant could safely return to India with her child. Challenge to that decision was made on a number of grounds. Leave was granted to the Upper Tribunal on the basis of a failure to properly consider the reasonableness of relocation, failure to factor into the proportionality assessment that the appellant was a victim of domestic violence.

5. Thus the matter comes before me to determine that issue.

6. At the hearing before the Fist-tier Tribunal the appellant did not appear. She wrote a letter asking for an adjournment on the basis that she was not very well. She said that she had a heart issue and in support thereof enclosed a statement from the doctor as to her fitness to work for 19th January 2017. She had palpitations and was referred to cardiology. That statement gave little indication as to the real state of her health and gave no indication as to why she could not attend the hearing. It is understandable in the circumstances why an adjournment was not granted, particularly as within this case no challenge was made to the credibility of the appellant but rather to the issue of safety return.

7. It was the finding of the Judge that, notwithstanding that she would not receive the support from her parents, she could safely relocate to another part of India especially to one of the large urban centres.

8. The Judge found there to be an internal flight alternative available to the appellant. Although, as a single woman with a child, her return to India would not be without difficulties she was well educated and skilled. In many respects that set her apart from many of the 36 million women who reside in India who are single, divorced and widowed. By moving to an urban centre it was found that she was more likely to benefit from the domestic violence provisions highlighted by the Secretary of State. It was noted the Indian government operated a form of welfare for single women who are fleeing from domestic violence and that such welfare includes the

provision of accommodation and childcare. In terms of the appellant's daughter she was of a young age and her best interests were considered to be with her mother in her native culture. It was noted there was free education for children in India and systems in place to facilitate child care for working mothers.

9. The burden of Mr Wood's submissions are essentially threefold, namely that the Judge should have given greater weight in the consideration of proportionality to the fact that the appellant is a victim of domestic abuse. Secondly, that the background material as presented indicates that the shelters provided would be insanitary and would not accommodate children and thirdly, that the appellant has now been diagnosed with postural tachycardia syndrome (PoTS) which would restrict her ability to work in India.

10. In terms of the fact that the appellant is a victim of domestic abuse, it is to be noted that when she joined her husband in the United Kingdom, it was on the basis that he too had limited leave to remain. It is for this reason that the domestic abuse did not enable her to acquire settled status under the Immigration Rules. Although violence was clearly perpetrated upon her, there is no indication that that has affected her mentally or in her ability to live a normal life. In those circumstances she does not present as a vulnerable person but essentially as a person who has no family support upon return. Clearly had there been evidence of post-traumatic stress it would have been an important factor to have borne in mind.

11. The decision letter sets out in some detail the support that would be available upon return to India as a lone female, references being made particularly to the Ministry of Women and Child Development which runs over 600 shelter homes for women. The SWADHR shelter homes provide food, clothing and counselling services in addition to accommodation. There are also non-governmental run shelters. There are 800 hostels mainly in cities where working woman can live for up to three years some hostels have day care centres for children. They also have programmes to support training and employment which conducts skills training. It is said there are 14,059 training centres across the country.

12. Reference is made also to the Immigration Refugee Board of Canada report and noted in a response dated 16th May 2013 that the number of women in the Indian workforce has nearly doubled between 1996 and 2001. Women are filling positions in new industries and in some previously male dominated industries. It was noted an increased number of female doctors, scientists and professors an increasing number of young women joining the workforce and increased job opportunities.

13. A number of networks are cited in the decision said to be available to assist the appellant in respect of employment.

14. The decision is a wide ranging one, setting out many aspects of support potentially available to the appellant. Mr Wood, however, has sought to highlight one aspect between paragraphs 50 and 57 of the refusal letter. Such indicates that, according to the Indian Planning Commission, the working women's hostels have only basic facilities of inferior quality with poor sanitary conditions. He submits that in those circumstances it will not be appropriate to live in such hostels or indeed to have a child in such hostels. It is far from clear from the actual passage, as to whether that comment applies to all hostels or merely to some hostels. Very much will, in any event, depend upon whether there is any work for the appellant and whether she can afford accommodation on her own right or not. Many of the hostels of course are designed for women rescued from the sex trade or escaping abusive relationships in India. Such does not apply to the appellant in this case. Some hostels do not take children. However it is clear from the overall context of what is said in the decision letter that there is generally support and skills training available. Having regard to the material as set out in the decision letter, I find that the Judge was entitled to come to the conclusions as to return which he did.

15. The third aspect is the health of the appellant. It said that the judge was put on notice that the appellant could not work, but that seems to me to be a rather broad statement to arise out of a medical note as to fitness to work. This is particularly so given the immigration context in which the appellant should not have been working. There is nothing in that particular medical note to indicate the nature and seriousness of the condition or the length upon of time that should be taken off work. It made but brief reference to palpitations referred to cardiology. Subsequent to the hearing a bundle has been prepared to show that the appellant suffers from PoTS syndrome. A detailed note of what that involves is extracted from a website and Wikipedia. This is singularly unhelpful as a report, which provides much guidance. Such indicates that some people have mild syndromes and in others the condition affects the quality of their life. It said that PoTS often improves gradually over time and that a number of self care measures and medications for that can help.

16. There is an NHS letter of 24th October 2017, which sets out some preliminary observations as to the investigations that are being conducted in connection with the health of the appellant. There is however no indication of seriousness or indication as to what affect, if any, that condition will have impractical terms upon the ability of the appellant to conduct her life. It merely indicates that the appellant has attended for some tests revealing normal left ventricular function and normal right ventricular function. It said that there are no significant valvular disease. There only seems to be a diagnosis of PoTS syndrome and there is little further indication as to what practical effect that will have in the future.

17. No doubt if there is significant disability afforded by that syndrome that can be the subject of further evidence submitted to the respondent in

support of a fresh claim. It does not however go to indicate any error of law in the decision of the judge.

18. Overall I find that the judge was entitled to conclude it was not unduly harsh or unreasonable to expect the appellant to return to India with her child.

19. In the circumstances therefore the appeal to the Upper Tribunal is dismissed.

20. The decision of the First-tier Tribunal Judge is upheld namely that the asylum appeal is dismissed, that in relation to humanitarian protection is dismissed as is that in relation to human rights.

No anonymity direction is made.

Signed Date 19 January 2018

Upper Tribunal Judge King TD