JR/2236/2019

Upper Tribunal
Immigration and Asylum Chamber

Judicial Review Decision Notice

The Queen on the application of **[E]**

Applicant

v

Secretary of State for the Home Department

Respondent

Before Upper Tribunal Judge Gleeson

Having considered all documents lodged and having heard the applicant in person and Mr Myles Grandison, of Counsel, on behalf of the Respondent, instructed by the Government Legal Department, at a hearing at Field House, London on 20 January 2020

Decision: permission is refused

(1) The applicant has permission to challenge by judicial review the respondent's decision on 31 January 2019 to refuse to treat her further submissions dated 10 January 2019 as a paragraph 353 fresh claim. The applicant appears in person, with the assistance of an Urdu interpreter. Both the applicant and her daughter are Pakistani citizens.

(2) The applicant makes this application on behalf of herself and her daughter, born on 10 July 2012. Her daughter is 7 years old and has been in the United Kingdom for less than 5 years: she is not a qualifying child. The applicant is a Christian, a fact not disputed in the respondent's decisions or the First-tier Tribunal determination of her in-country appeal.

(3) The applicant and her daughter are unlawfully in the United Kingdom. Following the issue of several visit visas, from which she returned to Pakistan, the applicant, her now estranged husband, and their daughter entered the United Kingdom for the last time on 25 February 2015 and overstayed, that visa expiring on 25 August 2015. The

applicant's daughter was 2 years old then. The applicant says that she separated from her husband on 8 June 2016 and that he remains in the United Kingdom, but she does not know where he lives now.

(4) On 29 April 2015, the applicant made an asylum claim but on 14 August 2015, the respondent refused that claim. The applicant had, and exercised, a full in-country right of appeal and became appeal rights exhausted on 20 July 2016. The First-tier Judge found that the applicant was not a reliable or credible witness and that her core account of being at risk of persecution as a Christian, and the subject of a fatwa, was untrue.

(5) The applicant made further submissions on 2 June 2017 which were refused in a refusal letter of 8 September 2018. Removal directions and notice of immigration bail were served. The applicant and her daughter did not embark for Pakistan and were not removed. The applicant and her daughter have not had access to public funds or accommodation since then.

(6) On 30 January 2019, the applicant again made further submissions which were refused on 31 January 2019. The respondent considered that the further submissions raised no additional matters over and above those already considered in the First-tier Tribunal decision and the previous refusal letter of 8 September 2018. That is the decision under challenge today.

(7) The effect of a paragraph 353 refusal is that the applicant has no right of appeal against the respondent's decision, whether in or out of country because the respondent did not accept that there was anything significantly different in the further submissions.

(8) Permission to seek judicial review was granted by Upper Tribunal Judge Norton-Taylor on 3 October 2019, on the basis that the respondent had arguably not given anxious scrutiny to the further submissions, and/or that the respondent had failed to place the new evidence in the context of the paragraph 353 test of a realistic prospect of success before an immigration judge. Judge Norton-Taylor considered that paragraph 17 of the refusal letter indicated that the respondent had arguably ceased her consideration at her own assessment of the evidence. Further and in the alternative, Judge Norton-Taylor considered that there was arguably a material change in circumstances: the applicant was separated from her husband and was the lone parent of a 6-year-old daughter. Judge Norton-Taylor considered it arguable that the respondent had failed to consider whether the new evidence, in that context, would create a realistic prospect of success before a First-tier Tribunal Judge.

(9) Following the grant of permission on 3 October 2019, by a letter dated 25 October 2019, the respondent offered to settle the judicial review application by reconsidering, within 3 months from the date a consent order was sealed, absent special circumstances, with the applicant withdrawing her application and no order for costs.

(10) In her skeleton argument for the present hearing, the applicant indicates why she rejected that offer. She relied on the terms of the grant of permission to the Upper Tribunal and repeated that she was a lone mother, with a 6-year-old daughter to care for, and that further delay in her case would affect the child's rights badly. The applicant would be left with minimal options and following withdrawal, would be the losing party in this application.

(11) The applicant observed that her daughter had the option of making an asylum claim in her own right, with reference to paragraph 391 and 315 of the Immigration Rules HC395 (as amended). She relied on the respondent's policy *Processing an asylum application from a child,* and asserted that 'every child matters, even if they are subject to immigration control'. She further relied on section 55 of the Borders Citizenship and Immigration Act 2009.

(12) The applicant, perhaps understandably, does not appear to understand how judicial review works. In her skeleton argument she concluded by saying:

> "The main applicant and the child are without an accommodation and any cash allowance for the last many months, and the concerned offices were requested for that, time and again, but without an outcome.
>
> In the light of the above-mentioned facts of the case and solicitations by the appellant [sic] it is requested that both the lone mother and the child be granted leave to remain as a refugee."

(13) Those closing paragraphs indicate that the applicant has misunderstood the powers of the Upper Tribunal in judicial review. An application for judicial review is not an appeal and the Upper Tribunal has no power to declare that the applicant and her daughter are refugees: that question was settled in the 2016 appeal decision and unless the claim is accepted as a paragraph 353 fresh claim it cannot be reopened.

(14) The applicant made oral submissions at the hearing, against her skeleton argument, repeating the points therein made and asking me to grant refugee status, which I cannot do in the context of a judicial review application. She also complained of difficulties with the housing support provided by Manchester City Council and by Burnley Council. Neither of those bodies is a respondent in this application. I am not seised of any housing or social security problems which the applicant is experiencing and I make no order thereon.

(15) The respondent in offering to reconsider and make a fresh decision has offered everything that the Upper Tribunal has power to order. The Upper Tribunal has power only to approve or quash the Secretary of State's decision and to make ancillary orders and declarations. This application for judicial review is now academic and must fail.

Permission to appeal to the Court of Appeal

(16) There was no application for permission to appeal to the Court of Appeal. Pursuant to paragraph 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended), I have considered whether I should grant permission to appeal.

(17) I refuse permission to appeal to the Court of Appeal because I am not satisfied that there is any arguable error of law in my judgment.

Costs

(18) By consent, there shall be no order for *inter partes* costs.

Judith AJC Gleeson

Signed: Upper Tribunal Judge Gleeson Dated: 20 January 2020

Home Office Ref:
Decision(s) sent to above parties on

Notification of appeal rights

A refusal by the Upper Tribunal of permission to bring judicial review proceedings, following a hearing is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a question of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was given (Civil Procedure Rules Practice Direction 52D 3.3(2)).