Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00865/2019
PA/00867/2019
PA/00869/2019
PA/00871/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision Promulgated**
On 22 July 2019	**On 26 July 2019**

Before

Upper Tribunal Judge Pickup

Between

MM
HM
HK
UK
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the appellant: Ms A Childs, instructed by Rashid & Rashid Solicitors
For the respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. *Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269), I make an anonymity direction. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of*

publication thereof shall directly or indirectly identify the appellant or any member of her family.

2. This is the appellant's appeal against the decision of First-tier Tribunal Judge Behan promulgated 21.5.19, dismissing her appeal against the decision of the Secretary of State, dated 14.1.19, to refuse her protection and human rights claim, with husband and two children as dependents.

3. First-tier Tribunal Judge Parkes granted permission to appeal on 17.6.19. Thus the matter came before me in the Upper Tribunal on 22.7.19

Error of Law

4. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside. It is not sufficient that there be an identifiable error of law, before the Upper Tribunal can intervene the alleged error must material to the outcome of the appeal.

5. Judge Behan entirely rejected the factual basis of the appellant's claim. The claim was to the effect that she had been abducted and raped and, when this resulted in pregnancy, terminated it with an illegal abortion. The judge neither accepted she was in fear of the man who allegedly raped and later allegedly threatened her, nor that she had any well-founded fear of persecution or was at any real risk of serious harm, or prosecution or other mistreatment by the authorities or other non-state actors in Pakistan for having had an illegal abortion.

6. It is relevant to note, as Ms Childs conceded, the grounds do not challenge any of the above or indeed any factual findings of the First-tier Tribunal and thus those findings must stand as made. Nevertheless she attempted to suggest that there had been no findings against the appellant that she had had an illegal termination of pregnancy and thus that this was relevant to the circumstances on return. I do not accept such a conclusion can be read into the decision. It follows that the appellant and her family members will be returned to Pakistan on the basis that her factual claim has been rejected in its entirety. Ms Childs also relied on the acceptance by the judge that the appellant suffered from mental health challenges. However, I note the unchallenged finding that depression and anxiety arose from events in the UK and that there was no risk of suicide. There is ample evidence that appropriate treatment for mental health issues is available in Pakistan.

7. The sole ground of appeal is that the First-tier Tribunal Judge failed to consider the private and family life rights of the appellant and her family outside the Rules, pursuant to article 8 ECHR. It is correctly pleaded out that the decision makes no direct reference to article 8 and it is pleaded that this is a material error of law.

8. Mr Tufan accepted there was no specific article 8 assessment but pointed to the best interests considerations at [55] of the decision and that the matters referred to at [56] were relevant to the article 8 claim.

9. Judge Parkes granted permission to appeal on the basis that it was arguable that the judge erred in not considering article 8 or section 117B of the Nationality, Immigration and Asylum Act 2002. However, I find that the the grounds are generic, focusing on the absence of an article 8 assessment, and fail to identify in what specific way the appeal could or should have been allowed on human rights grounds when the entire factual basis of the claim had been rejected.

10. Having previously visited the UK on a visit visa in 2012, the appellant returned, entering from Ireland, and claimed asylum in January 2015. She failed to attend for interview and absconded, as a result of which her claim was deemed to have been withdrawn in February 2016. Further submission were then lodged in May 2017, resulting in the refusal decision (RFR) of 14.1.19.

11. The appellant claims a family life in the UK with her partner and two children. Clearly, she has a poor immigration history. Neither she nor any member of her family has any lawful immigration status in the UK; they are all nationals of Pakistan. It is clear that neither the appellant nor any member of her family could meet the requirements of the Immigration Rules with respect to private and/or family life under Appendix FM or paragraph 276ADE and it was not contended before me to the contrary. Whilst Ms Childs sought to rely on the claimed abortion and mental health issues, given the complete and now unchallenged rejection of the factual basis of claim, I am satisfied there was certainly no basis upon which she could succeed on the basis of very significant obstacles to integration. As stated above, the judge accepted that the appellant is depressed and anxious but, unsurprisingly, rejected any real risk of suicide. The medical evidence was to the effect that the main cause of her mental health issues was an alleged series of distressing events that occurred in the UK. There was insufficient evidence that the high threshold of article 3 ECHR could be met, even if taking the evidence of her health issues at its highest and it would be difficult to see how this factor could be sufficient to engage article 8 ECHR. There was no evidence that the appellant would not be able to access appropriate treatment on return to Pakistan.

12. The judge accepted at [55] of the decision that it was likely the children's best interests were to remain in the UK, "because this is clearly where their parents wish to be and removal will cause disruption and stress to the children's main carers." Neither child meets the 7-year threshold of paragraph 276ADE so the reasonableness test does not apply. However, in relation to reasonableness and their best interests pursuant to Section 55 of the Borders, Citizenship and Immigration Act 2009, the judge found that as the children are both still very young they will have the support of their

parents and each other returning as a family unit and with little difficulty will be able to adapt to living in Pakistan so that it was reasonable to expect them to return to Pakistan with their parents.

13. I accept that the decision contains little that could be identified as an assessment of private and family life article 8 ECHR outside the Rules. However, following the decision of the Supreme Court in R (on the applications of Agyarko and Ikuga) v Secretary of State for the Home Department [2017] UKSC 11 it was for the appellant to establish that there were sufficiently compelling circumstances to justify, exceptionally, granting Leave to Remain outside the Rules on the basis that removal to Pakistan would be unjustifiably harsh. I can see nothing on the facts of this case that could be regarded as even coming close to compelling circumstances. The appellant and her partner obvious wish to remain and settle in the UK but they have never had any entitlement or legitimate expectation of being able to do so. They have never had any lawful status in the UK and pursuant to the statutory considerations required under section 117B of the Nationality, Immigration and Asylum Act 2002 the judge would have had to take into account that maintenance of immigration control is in the public interest and there is no evidence that the appellant is financially independent or that she spoke English. Little weight is to be given to private life developed in the UK whilst immigration status was precarious and/or unlawful. Similarly, little weight is to be given to family life with a partner developed where immigration status is unlawful. The children are not qualifying children so the issue of reasonableness of removal does not arise. In any event, on the basis of KO (Nigeria) [2018] UKSC 53, the assessment of best interests and where the children should go to would have to be made in the light of the real world facts that neither parent has any basis to remain in the UK and thus it would be reasonable to expect the young children to accompany them.

14. I accept that the decision contained no proportionality assessment outside the Rules. However, it has to be borne in mind that the Rules are the Secretary of State's response to private and family life claims and have been held to be proportionate. On the facts of this case there can be no doubt that even if the judge had gone on to specifically address the R (Razgar) v Secretary of State for the Home Department [2004] UKHKL 27 stepped approach, weighing the private and family life rights of the appellant and her family members against the strong public interest in their removal to Pakistan, the inevitable conclusion would have been that the decision was entirely proportionate and not disproportionate to private and family life rights. In the generic recitation of case law, the entirely inadequate grounds fail to identify any relevant factors that could reasonably have resulted in a properly self-directing First-tier Tribunal Judge to allow the appeal on article 8 grounds, or put another way to conclude other than that the appeal had to be dismissed on human rights grounds.

15. Thus whilst there may have been an error in failing to address private and family life more fully within the decision, on the particular facts of this case the error is not material. This is a case that had very clearly no prospect of success on human rights grounds. In the circumstances it would serve no useful purpose to set aside the decision to be remade on human rights grounds, as the dismissal of the appeal would be the inevitable consequence.

Decision

16. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed DMW Pickup

Upper Tribunal Judge Pickup

Dated