



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11508/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC
On March 4, 2019

Decision & Reasons Promulgated
On March 7, 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

[J A]

~~(ANONYMITY DIRECTION NOT MADE)~~

Respondent

Representation:

For the Appellant: Mr McVeety, Senior Home Office Presenting Officer
For the Respondent: Ms G Patel, Counsel, instructed by Majad Malik Solicitors

DECISION AND REASONS

1. Whilst the respondent is the appellant in these proceedings before me, I hereafter refer to the parties using terminology used in the First-tier Tribunal. The appellant in the First-tier Tribunal will hereafter be referred to as “the appellant” in these proceedings, and the respondent will be referred to as “the respondent”.

2. The appellant, a Pakistani national, entered the United Kingdom on April 9, 2017 as a visitor accompanied by her three children (Pakistani nationals). She made an application to remain as a spouse, but this was refused with an out of country right of appeal on March 8, 2018.
3. She claimed asylum on March 29, 2018 and the respondent refused her application on September 21, 2018.
4. The appellant appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on October 1, 2018.
5. Her appeal was heard by Judge of the First-tier Tribunal Chambers on October 29, 2018 and in a decision promulgated on November 7, 2018 the Judge allowed her appeal finding that the appellant and her husband had put forward a consistent account and she was reasonably likely to face persecution due to her and her family being long-term Christians.
6. Permission to appeal was sought on November 5, 2018 and on November 28, 2018 Judge of the First-tier Tribunal Blundell granted permission to appeal finding it arguable the Judge had erred by failing to resolve either of the two questions posed by article 8(1) of the Qualification Directive even though the Judge had referred to the decision of AK & SK (Pakistan) CG [2014] UKUT 569 (IAC).
7. Article 8(1) of the Qualification Directive states:
 - (i) As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.
 - (ii) In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.
 - (iii) Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin.
8. No anonymity decision is made.

SUBMISSIONS

9. Mr McVeety adopted the grounds of appeal and submitted that in allowing the appeal the Judge had failed to make findings on issues raised in the decision letter. Although there had been no presenting officer at the hearing it was incumbent upon the Judge to address the content of the decision letter. Whilst the Judge had commenced his findings at paragraph 7 of his decision he submitted that there had been no findings on matters raised in the decision letter anywhere in the decision

and that the Judge had simply set out the appellant's claim between paragraphs 7 and 17 as well as reciting what the Country Guidance of AK and SK said. He had misapplied the findings of that case in paragraph 19 of the decision when considering the likely punishment for blasphemy. In order to allow the appeal, the Judge had to find something more than a mere allegation of blasphemy and there had to be evidence that the authorities were actively pursuing the appellant.

10. Ms Patel opposed the application and submitted that the decision was sustainable, and the grounds of appeal were a mere disagreement with the decision. The respondent had not sent a representative to the Tribunal and it was not the Judge's role to enter the arena and pose questions that the respondent may have put himself. She submitted that the Judge made findings open to him at paragraphs 12, 17 and 19 of the decision and then considered the case against other background evidence and concluded that the appellant should succeed with her appeal.
11. Mr McVeety responded arguing the fact the Judge had referred to evidence in his decision did not mean he had engaged with it.
12. I reserved my decision.

FINDINGS

13. In refusing the appellant's application, the respondent provided a 19-page decision letter albeit the protection aspect of the appeal was considered on pages 5-11.
14. In particular, weight was placed on the fact that the appellant's claim to being accused of blasphemy was based on speculation and the emails and documents provided made no reference to a blasphemy case or suggest threats were being made. The decision also referred to the fact that when an application for leave to remain was lodged on April 30, 2017 there was no reference to her claim that she had been accused of blasphemy. The decision letter commented on the failure by the appellant to mention a ransom note that had been sent to her husband.
15. When considering her appeal, the Judge was not assisted by the fact there was no presenting officer. He set out at paragraph 3 a brief summary of the decision letter and from paragraph 7 the Judge provided his "Findings".
16. I accept Mr McVeety's submission that the "findings" at paragraphs 7-11 are in general a repeat of the appellant's claim.
17. At paragraph 16 the Judge set out the appellant's fears about the security situation and cross-referenced these concerns with the background material which suggested that the motivation for blasphemy threats may simply be spite, arise out of personal or business disputes or arguments overland and property. At paragraph 17 the Judge acknowledged that the country evidence suggested that there had been general animosity toward Christians which sometimes broke out into actual persecution.

18. There is merit to Mr McVeety's submission that the Judge has not specifically addressed the concerns raised in the respondent's decision letter and also found that the problems probably arose out of spite or other personal reasons to do with the appellant's Christianity.
19. The Judge found there was no evidence that blasphemy proceedings had ever been instituted and the Country Guidance decision made it clear that an allegation of blasphemy alone was insufficient. The Judge was not convinced there were any proceedings but speculated there could be proceedings. Whilst I accept the Judge has gone on in paragraph 19 to give additional reasons for allowing the appeal there were still no findings about the issues raised in the decision letter. Such findings are necessary in order to consider whether return to her home area or internal relocation were possible.
20. Additionally, the findings in relation to the blasphemy claim are contrary to the approach suggested in the Country Guidance case and no reasons for departing from that case were given by the Judge.
21. It is unclear from the decision whether the case was being allowed on blasphemy grounds alone or on the basis that the appellant was a single woman with responsibility for three children if she were returned to Pakistan. I find there has been an error in law for the reasons provided in the grant of permission and for the reasons set out above.
22. Both representatives agreed at the hearing that in the event there was an error that this matter should be remitted to the First-tier Tribunal de novo.
23. I therefore remit this matter back to the First-tier Tribunal under section 12(1) of the Tribunals, Courts and Enforcement Act 2007.

Notice of Decision

There is an error in law. I set aside the original decision and remit the matter back to the First-tier Tribunal under section 12 (1) of the Tribunals, Courts and Enforcement Act 2007.

Signed

Date 05/03/2019

A handwritten signature in black ink, appearing to read 'SPALIS', with a horizontal line underneath it.

Deputy Upper Tribunal Judge Alis