Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13635/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 31 May 2019	On 17 June 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

SN
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Spurling of Counsel instructed by Sky Solicitors Ltd
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against a decision of Judge of the First-tier Tribunal Farmer who, in a determination promulgated on 25 March 2019, dismissed her appeal against a decision of the Secretary of State dated 11 December 2017 to refuse her asylum. The appellant's partner MTR and their son KF are her dependants in this appeal.

2. The appellant and her dependants are citizens of Pakistan, the appellant having been born on 15 September 1983 and her partner on 1 January

1987. Their son was born on 29 March 2017. The appellant entered Britain as a student in 2011 at the age of 27. In August 2012 she applied for leave to remain as a student which was granted until 23 November 2012. On 28 April 2014 she again applied for leave to remain as a student which was refused on 30 May 2014. On 12 June 2017 she claimed asylum with her child and partner as her dependants.

3. In 2012 the appellant had met MAA and married him that year in an Islamic marriage ceremony. Her husband was abusive towards her. He was a police officer but was suspended from the police in December 2014 when certain sexual offences were being investigated. He again assaulted the appellant in January 2015. She moved in with her sister and reported the incident of violence to the police and she asserts that her sister told her family in Pakistan what was happening and her family then instructed her to return to live with her husband despite his violent behaviour and the criminal investigation. She had returned to her husband but his ill-treatment of her continued and she again left him in February 2015. In April that year he was found guilty of serious sexual crimes including the grooming of children and sentenced to 23 years in prison. She asserted at the hearing that her family had not contacted her to offer support.

4. The appellant met TR in 2016. He supported her emotionally and their relationship developed, their son being born on 20 March 2017. It was the appellant's claim that because her son was born out of wedlock she had not been able to obtain identity documents for him and that although she was separated from her husband and despite his actions towards her she did not feel emotionally strong enough to divorce him. Her assertion in her asylum claim was that she, her partner and the child would be subject to honour killings on return and that they would not be safe anywhere in Pakistan because societal attitudes were such that her son would not be accepted anywhere. Her family would not be able to tolerate what she had done.

5. The appellant's appeal was first heard in January 2018 by Judge of the First-tier Tribunal Wright who allowed the appellant's appeal. The Secretary of State appealed and Judge Wright's decision was set aside by Upper Tribunal Judge Kebede on the basis that the judge had not considered the guidance in the country guidance case of **SM (lone women – ostracism) Pakistan (CG) [2016] UKUT 67** and remitted to the First-tier. In these circumstances the appeal came before Judge Farmer. Judge Farmer noted that at her interview the appellant had stated that her family were emotionally supportive and that therefore the appellant was changing her claim before the hearing, and indeed he noted the argument by the Presenting Officer that the appellant was changing her claim so as to put forward the assertion that she would be subject to an honour killing on return. She noted moreover the submission of the appellant's representative that the respondent could not assume that the appellant should or would act in a certain way and therefore could not assume that she would divorce and remarry. The judge noted a document

which set out the requirements to obtain an ID card in Pakistan and the appellant's assertion that her partner had called the Pakistan High Commission who had told him that a marriage certificate would be required for the ID card. The assertion by the appellant was that she could not register her child at school as she would not be able to obtain an ID card for him as he was born out of wedlock and was illegitimate. The judge considered the documentary evidence relating to the obtaining of the ID card which stated that such a card could be obtained by going to the nearest NADRA office and could be obtained in Britain. The judge concluded that what was required was physical presence of the parents as well as a detailed birth certificate naming both the mother and the father and stated it was clear from the documentation that where an illegitimate child's father was unknown then there would be a genuine difficulty in registering. However, given that the birth certificate named both parents the judge concluded that it was clear that the parents would be able to register their son and obtain an ID card for him and therefore he would be able to access both health and educational services in Pakistan. The judge did not accept that the appellant's partner was told that he could not obtain an ID card for his son or that he was wrongly advised or misunderstood the advice he was given. The judge stated that had the appellant and her partner attended the offices in an attempt to get an ID card they would have been able to do so. She did not find that the appellant and her partner were credible on that issue. Turning to the issue of whether or not the appellant and her family would be persecuted on return the judge considered whether or not internal relocation would be unduly harsh following the guidance in the House of Lords judgment in **Januzi v SSHD [2006] UKHL 5**. The judge came to the conclusion that she could not be satisfied that there was a risk from the appellant's family, particularly given that the appellant had said that her family had been supportive of her when they found out what her husband had done and that she had made no mention of her family forcing her to return to him either in the interview or in her first statement. The judge pointed out that that issue had only been raised in the most recent witness statement and she found that that was not credible. In any event, she found that internal relocation would be open for the appellant, her partner and their child who would be returning to Pakistan as a family unit and would have the option of marriage. The situation of the appellant was quite different from that of a lone female returning with a child on her own. The judge stated that they would present as a couple and be treated as such and that Pakistan being such a large and diverse community that would provide opportunities for relocation and offered a degree of anonymity. Although there was a stigma associated to children born out of wedlock the judge found that that fell short of meeting international protection, and secondly, that as they were returning as a family the appellant's partner would be a suitable male patron for her and their child.

6. The judge set out the head note in **SM and MH (lone women – ostracism) Pakistan (CG) [2016] UKUT 00067** and noted that the appellant's evidence was that she did want to be divorced and she

considered herself divorced but she had not had the strength to do so and was too upset to face that process. Moreover, the appellant had said that she did not want to marry as she associated marriage with control and it had negative feelings for her. Her partner had expressed a wish to marry but said that he could not force her.

7. The judge stated:-

> "34. It is clear that the appellant could divorce her husband if she chose to do so. She has given evidence that she would like to be separated from him and already regards herself as such. I accept her evidence that she has not wanted to think about it but I also find that as it is her wish to divorce him this is something that with support she can and will do. As far as remarriage is concerned, for the reasons set out above I find that she is in a loving and committed relationship. She lives with her partner and together they care for their much loved child. I do not accept her evidence that she cannot bring herself to marry in those circumstances, especially when accepting her evidence that she worries for the safety of her son which understandably is her priority".

8. In paragraphs 37 onwards the judge noted the terms of a report by Professor Christoph Bluth dated 6 March 2019 in which he had stated that:-

> "The argument is entirely predicated on the concept that the appellant would divorce her current husband and marry her partner and that she conceals the truth about her child's birth. The appellant has decided, for whatever reasons, not to divorce her husband and to marry her partner. It is her right to make such a decision. The Home Office statement raises the question whether the fact that in her country of origin persons can be persecuted because they have sexual relationships outside marriage, or they are single mothers means that the appellant should be expected to marry to mitigate that risk. This is a legal issue which it is for the Tribunal to determine. As a country expert, I will consider the accepted facts of the case as they present and the implications for the potential risks to the appellant on the basis of the country evidence as instructed by the solicitor."

9. The judge said that she considered that the analysis put forward was flawed in that in the determination in **SM** the Tribunal had found that it was safe to return as an unmarried couple. If the appellant chose not to marry she could still return without the risk of persecution. The judge stated:-

> "The logical conclusion of Professor Bluth is that no woman who has an illegitimate child and is not married to her partner can relocate to Pakistan."

The judge went on to consider the assertion by Professor Bluth that if the appellant returned to Pakistan with her partner:-

> "This situation will not necessarily be mitigated because unmarried couples cannot live together and they cannot establish a family life ... Even if the appellant were to divorce her husband and marry her

> partner, she would still be vulnerable to the charge of zina, because in fact she has committed this act. She has had sexual relations with a man whilst married to another man and has had a child as a result. Her partner would also be vulnerable to such charges."

The judge stated that having found that there was strong family life between the appellant, her partner and their child and that they could live together and support each other and that Professor Bluth's report was proceeding on the incorrect basis that the appellant would be likely to be returning to Pakistan alone with her child as a single, unmarried woman, the reality was that in **SM** the country expert, Dr Ballard, had found that to return with a male guardian would protect the appellant and that her reputation as a respectable woman could be restored by her becoming a wife and daughter-in-law in a new family, and that if her partner were able to marry her that would legitimise her social status. The judge preferred that conclusion to that of Professor Bluth. Moreover, the judge went on to take into account the fact that the appellant's partner had no independent legal status in Britain as he had been in Britain on a spouse visa until 2016 and despite divorcing in 2015 he had taken no steps to notify the Home Office that he was no longer entitled to that visa.

10. The judge emphasised that it was open to the appellant to divorce her husband as she had expressed a wish to do so. She did not accept that there was any evidence to indicate that the appellant's family would reject the appellant and their grandchild or her new partner, but that even if the appellant did not wish to return to her home area she, her partner and their child would be able to establish themselves with or without the support of extended family members taking into account the Assisted Voluntary Return System and that they had some money to tide them over and enable them to find accommodation suitable for the family in the short term. She therefore concluded it would not be unreasonable or unduly harsh to expect the appellant to internally relocate to a city in Pakistan such as Lahore or Karachi where she could live a normal life.

11. The grounds of appeal first stated that the judge had erred in concluding that the appellant's child could receive a NADRA ID card when the document obtained from the High Commission has stated that physical presence was required together with an original Pakistani passport or old ID card, a detailed birth certificate naming both parents, the computerised national ID card of both the mother and father with one of the parents having updated their marital status at NADRA and that otherwise NADRA would not be able to process the application and that a marriage certificate for married applicants or divorce or death certificate to change marital status to divorced/widowed, originals or photocopies would be required. First, it was therefore argued that the judge had not considered all the requirements of the NADRA Rules. Secondly, the grounds argued that the judge had erred in consideration of the credibility of the appellant when concluding that the appellant would not be at risk from her own family. It was stated that the appellant had at interview stated that she feared from her family and from the government and the possibility of an

honour killing. Thirdly, it was argued that the judge had been wrong in her consideration of the issues of divorce and remarriage given that the appellant had given clear reasons why she would not wish to do so emphasising that at the hearing the appellant had been upset when this issue was put to her. The fourth ground asserted that the judge had erred in her consideration of the expert report and the issue of the appellant being able to legitimise her status.

12. The fifth ground stated that the judge had erred in the consideration of internal relocation, and the sixth stated that the judge was wrong to state that the appellant had not made a claim within the Rules.

13. The application for permission was considered by Judge of the First-tier Tribunal Boyes who granted permission on the first four grounds but not on the final two grounds relating to internal relocation and in relation to whether or not the appellant would come within the Rules. The judge was clearly correct not to grant permission on those two grounds and indeed that decision has not been challenged. There is simply nothing to indicate that the appellant, even if it were the case that her father was a retired army officer, could be traced by her family if she did not want to contact them on return and secondly, there had never been a credible argument put forward that she could meet the requirements of the Rules.

14. Judge Boyes noted that Professor Bluth had claimed to have expertise relating to conditions in a very large number of countries and indeed seemed to focus on questions of nuclear proliferation and stated that it was appropriate for the Upper Tribunal to examine to what extent Professor Bluth was an expert on the issues in the appeal and his treatment of the evidence generally. Before the hearing before me a statement from Professor Bluth, asserting his expertise, was submitted.

15. Mr Spurling argued that I must conclude that the judge should have considered the position as it stood at the date of hearing and what the situation would be if it were replicated in Pakistan. That being the case, he argued that the appellant was entitled to asylum. He referred to the grounds of appeal arguing that the findings of fact of the judge were not supported by the evidence with regard to the support which the appellant's family would give to her – the fact that she had said that they had given her emotional but not financial support did not mean that they would support her decision to leave her husband. Moreover, with regard to the issue of divorce the appellant's reasons for not getting divorced were plausible and her assertions should have been found credible by the judge. The situation on return would be that the appellant's sin of having a relationship outside marriage and having an illegitimate child could not be wiped out and therefore this case was distinguishable from that of the country guidance case.

16. He referred to the report of Professor Bluth and stated that the details therein showed that Professor Bluth understood the subject and moreover,

he went on to argue that the judge had erred in her consideration of the NADRA card.

17. In reply, Mr Jarvis stated that there was no evidence that the NADRA card was required to obtain basic access to services even if it were a legal requirement. He referred to the judgment in **MA (Ethiopia)** and stated the reality was that the appellant would be being returned on an emergency travel document and that that should be sufficient for her to fulfil the requirements for obtaining the NADRA card. He argued that the judge had reached findings and conclusions which were fully open to her with regard to the appellant's relationship with her family. The judge was correct to follow relevant country guidance. No case had been made that country guidance should not have been followed. He referred to the punishments for zina offences and stated that there was no evidence whatsoever as to how often such offences were punished.

Discussion.

18. The essential questions before me are whether or not the judge either made an error in application of the law or an error of fact such that the error of fact was material to the extent that that amounted to an error of law. I consider that the basic facts as found by the judge were well reasoned. In brief this is an appellant who came to Britain, married and separated from her husband because of his violence and his criminal activities. He was imprisoned for 23 years in 2015. The judge accepted that the appellant had formed a relationship with her current partner and their child and that the relationship was a close family relationship where both parents were not only in a loving relationship with each other but also with the child and that they would do all they could for the benefit of that child.

19. I consider that there is no evidence before me to show any impediment whatsoever to the appellant divorcing her husband to whom she had been married in an Islamic ceremony, without undue difficulty and indeed that she would be able to do so in Britain and, secondly, particularly given that her partner and the child are her dependants in this appeal, I can only conclude that this is a family unit which would be returning to Pakistan together and moreover, that there are no reasons why the appellant should not marry her partner once she is divorced. There are clearly no immutable characteristics in the appellant's position which would mean that the fact that she is not married is a fact which will always remain and therefore she either could not or would not marry either before returning to Pakistan or on return. That is the context in which I have to consider the grounds of appeal and indeed, I am entitled to take into account that the judge gave clear reasons for finding that internal relocation would be open to this family on return and that the appellant would not be a lone woman on return: she would be returning with her child and her partner. While I consider that the judge was perfectly entitled to find that the appellant would not be at risk of harm from her family, there is simply no

reason why, if she did not wish to contact them, she would have to do so on return as internal relocation would be available to her.

20. Specific matters were raised in the grounds of appeal, the first being the issue of the NADRA card. While it may be the case all the documents set out in the note at page 101 of the bundle, from the High Commission for Pakistan are not all available, it is not at all clear that a marriage certificate for the parents of the applicant for a NADRA card or child registration certificate is required. What is clear is that a birth certificate mentioning the father and mother's names is required as well as their own identity cards and that physical presence of the immediate blood relative is required. The marriage certificate is only required for married applicants. I therefore consider that the grounds of appeal are wrong to claim that the parents' marriage certificate must be produced. That simply is not what is said in the document from the High Commission. But be that as it may, there is nothing on that document to indicate that an ID card is required for anything in Pakistan or alternatively, that if a child does not have an identity document that child would be stopped from access to education or basic healthcare. It is for the appellant to prove her claim and that has not been done. I would add that I could find nothing in Professor Bluth's report to indicate that the child would face persecution or discrimination amounting to ill-treatment on return because he did not have an ID card.

21. Professor Bluth's report concentrates on the appellant being a victim of prosecution under the Zina Ordinances on return because she had formed an adulterous relationship. There is simply no statistical evidence to show that a woman in a stable relationship with the father of her child would be prosecuted under those ordinances or what the likelihood of such prosecution would be. There is obviously considerable evidence about the use of the Zina Ordinances but there is nothing to indicate that they are used against a woman who has formed a genuine and stable relationship with another man while still married where her husband had abused her and committed serious crimes to the point that he was imprisoned in another country. I therefore consider that again the appellant has not proved that she would face persecution on return – internal relocation is open to her and she and her partner would be able to go, as the judge stated, to a city where they were not known and live as husband and wife with their child. That being the case, the appellant has not shown that she has a well-founded fear of persecution or indeed Article 3 ill-treatment on return to Pakistan. There is nothing to indicate that the appellant could not live discretely with her partner in Pakistan or that, given they have a child that they would not be accepted as a couple. This is clearly not an **HJ** (Iran) situation: it is entirely the appellant's choice not to divorce her husband and marry the father of her child: she has stated that she would like to marry him in due course. This is not case of the appellant having to hide her nature as it would be when a gay person is required to hide his or her sexuality.

22. I would add that as there is simply nothing to indicate that the appellant could not divorce her husband and remarry without difficulty and therefore should she not wish to return to Pakistan as a woman who was in a relationship with a man to whom she was not married, the remedy is in her own hands. Indeed, I consider that the assertion that a woman who has no reason not to take steps to marry her partner even though she has stated that she would like to do so at some stage would be entitled to asylum on the basis that she would face persecution on return is entirely false and to so find would be perverse – to reach that finding would mean that any man and woman from Pakistan who wished to remain in Britain and believed themselves to be in a genuine relationship would be entitled to remain on the basis that they considered that they would be persecuted on return because they were unmarried.

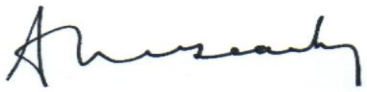
23. The judge properly applied the guidance in the country guidance case of **SM** and I consider that on the evidence before her she reached conclusions which were fully open to her. Indeed, the country guidance was not directly questioned.

24. There is no error of law in the determination. I would add that the reality is that this nuclear family would be returning to Pakistan together there is nothing to indicate that their rights under Article 8 would be infringed by their being expected to do so.

25. I therefore find that the decision of the judge in the First-tier dismissing this appeal on asylum and human rights grounds shall stand.

Decision.

This appeal is dismissed.

Signed:  Date: 12 June 2019

Deputy Upper Tribunal Judge McGeachy

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 her or any member of her 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 Date

Deputy Upper Tribunal Judge McGeachy