Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06589/2019 (V)

THE IMMIGRATION ACTS

Heard Remotely by Skype for Business	**Decision & Reasons Promulgated**
At Cardiff Civil Justice Centre	
On 15 October 2020	**On 26 October 2020**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

S B
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr C Howells, Senior Home Office Presenting Officer
For the Respondent: Ms M Butler, instructed by Migrant Legal Project (Cardiff)

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or court directs otherwise, no report of these proceedings shall directly or indirectly identify the respondent (SB). This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to contempt of court proceedings.

2. Although this is an appeal by the Secretary of State, for convenience I will refer to the parties as they appeared before the First-tier Tribunal: appellant (SB); respondent (Secretary of State).

Introduction

3. The appellant is a citizen of Pakistan who was born on 27 November 1990.

4. The appellant arrived in the United Kingdom on 23 May 2011 with a student visa valid until 25 October 2012. That leave was curtailed on 21 May 2013 but she was granted further leave as a Tier 4 ((General) Student) on 21 August 2013 valid until 20 March 2015. On 22 August 2014, her leave was again curtailed to expire on 26 October 2014.

5. On 23 September 2014, the appellant claimed asylum. That, together with her son's application for asylum, was refused on 31 July 2015.

6. The appellant appealed to the First-tier Tribunal. In a decision sent on 8 February 2016, Judge C J Woolley dismissed the appellant's appeal on all grounds.

7. On 9 March 2018, the appellant lodged further submissions which were refused on 18 July 2018. That decision was reconsidered and, on 16 June 2019, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

8. The appellant again appealed to the First-tier Tribunal. In a determination sent on 20 November 2019, Judge Lever allowed the appellant's appeal on asylum grounds.

9. The Secretary of State sought permission to appeal. On 30 December 2019 the First-tier Tribunal (DJ Woodcraft) granted the Secretary of State permission to appeal.

10. On 28 January 2020, the appellant filed a rule 24 reply in response to the grant of permission.

11. The appeal in the Upper Tribunal was initially listed on 2 April 2020. However, because of the COVID-19 crisis, that listing was vacated.

12. On 17 March 2020, the appellant filed a supplementary rule 24 reply having now seen the Secretary of State's grounds of appeal.

13. On 2 April 2020, the UT issued directions, in the light of the COVID-19 crisis, indicating a provisional view that the issues of whether the First-tier Tribunal's decision involved an error of law and whether it should be set aside could be determined without a hearing. The parties were invited to make submissions both on the substantive issues in the appeal and also on whether the appeal should be determined, on the error of law issue, without a hearing.

14. Following submissions received from the parties, the Upper Tribunal issued further directions that the appeal should be listed for a remote hearing by Skype for Business.

15. That hearing was listed on 15 October 2020. I was based in the Civil Justice Centre and Ms Butler, who represented the appellant and Mr Howells, who represented the Secretary of State joined the hearing by Skype for Business. The appellant also attended through Skype for Business.

The Judge's Decision

16. Before Judge Lever, the appellant maintained her claim for asylum on the basis that it had previously been rejected by Judge Woolley in her appeal in 2016. She claimed to fear her family as she had married outside her family in 2012 in the UK and had since been divorced through an Islamic divorce. She had then, again in the UK, had a relationship with another man with whom she had a son. She feared reprisals and ostracism from her family and society generally in Pakistan.

17. In his determination, Judge Woolley had rejected the appellant's claim to be at risk on that basis.

18. At para 14 of his determination, Judge Lever took Judge Woolley's decision in 2016 as his "starting point under the principles of **Devaseelan**.". Then, at paras 15-19, Judge Lever dealt with the appellant's claim on that basis before him as follows:

> "15. Essentially the fresh evidence while running to many pages is based on the Appellant's mental health which in turn it is suggested will enhance the risk and problems faced by the Appellant on return to Pakistan. It is also said that the child [M] also displays problems, although it may be that given his age and circumstances they are directly linked to his mother's mental state, attitude and circumstances. There is no suggestion so far as I can see that one should be removed or allowed to stay contrary to the fate of the other.
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> 16. It is also clear within the evidence that since arrival in the UK the Appellant has not returned to Pakistan so there are no fresh circumstances that have directly impacted upon the Appellant by further time spent in that country.
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> 17. I have also noted that the Appellant's witness statement October 2019 and I find no reference there to any further communications or threats or incidents directly or indirectly affecting the Appellant and emanating from Pakistan.
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> 18. In terms of **Devaseelan** the following are the key findings made by Judge Woolley following the appeal hearing in February 2006 (*sic*) when the Appellant did not give evidence. It is also clear that in reaching his decision Judge Woolley had available and considered a country expert report prepared by Dr Daryn which he described as 'a very full and reasoned expert report', paragraph 34. **KA CG [2010] UKUT [2016]**, and

SM [2016] UKUT 00067. He noted that the facts in this case were similar to the situation in **SM** which whilst not country guidance reaffirmed **KA**.

19. Judge Woolley had compared and contrasted the findings in **KA [2010]** with the expert report of Dr Daryn. He found no basis for departing from **KA** and proceeded to look at the evidence in terms of answering the three pertinent questions raised in that case. Firstly he found that the Appellant did not come from a rural area but a relatively sophisticated city and found that honour killing was not entrenched or prevalent in that area. Secondly he found no risk from her husband or [the man with whom she had a relationship in the UK] as both men had essentially disappeared from her life. I find no fresh evidence to dissuade me from that finding. I also conclude from all the evidence available that the judge was correct to identify the Appellant coming from a wealthy family with a reasonably liberal attitude towards women. He concluded that the reality was that her family, rather than posing a direct threat to her had essentially ostracised her. In other words wanted nothing further to do with her and would not seek to help or assist her. Although the Respondent sought to argue against that in the refusal letter I find that to be a safe and clear finding and there is no fresh evidence that dissuades me from departing from that finding."

As will be plain, Judge Lever found, as had Judge Woolley in the previous appeal, that the appellant was not at risk from her family as a result of her marriage outside the family and her further relationship in the UK and the birth of a son out outside marriage.

19. Judge Lever then went on to deal with the remaining issue in the appeal. At paras 20 and 21, Judge Lever identified those issues as follows:

> "20. The remaining issue therefore is whether the Appellant could return and relocate outside of the family home in Pakistan given her situation as a lone female with a child, together with her current mental condition as outlined in various documents that essentially form the core of the fresh evidence.
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> 21. The issue therefore is whether given the Appellant's personal circumstances whether the risk and level of protection available in other parts of Pakistan means that it would be reasonable or unduly harsh for her to relocate."

20. There, it is plain that, the judge went on following his adverse finding in para 19 to consider whether the appellant could internally relocate within Pakistan.

21. At paras 22-26, the judge dealt with the issue of whether it would be "unreasonable" or "unduly harsh" for the appellant to relocate within Pakistan. The judge said this:

> "22. The previous judge had found it not to be unduly harsh, in that she could access women's refuge centres and because of her education she would be able to live by herself, particularly in a city. That appears to be the basis upon which her appeal was dismissed and was in accordance with as the judge found the reasoning within **KA** and **SM**. It was accepted by the

previous judge and I agree, that on return she would have no support from her family or any male guardian.

23. I have looked carefully at country material and in particular the not insignificant amount of medical evidence concerning the Appellant's current position and to a lesser extent that of her child.

24. Each case has to be determined on its own facts, in **Januzi** when considering internal relocation the inquiry was to be directed it said at the situation of the Appellant nor did it require conditions to reach the Article 3 level. It is on that basis and I now consider the Appellant's position in light of that core fresh evidence, namely the medical matters raised.

25. I find the following based on all material available:

'(1) I find in line with Judge Woolley that the Appellant has been ostracised by her family and could not look to them to provide support.

(2) I do not find she has a male guardian available to her within Pakistan.

(3) I find no threat emanates from either her ex-husband or [the man with whom she had a relationship in the UK], both of whom seem to have disappeared.

(4) In terms of relocation when looking at the situation of the Appellant I do find that it would be unreasonable and unduly harsh in her current circumstances. She has a small child and her current medical condition is such that she is I would regard a vulnerable woman, particularly one returning alone to a country such as Pakistan. I find it most likely that she will be dependent upon women's shelters which is not necessarily an ideal situation. I have noted evidence that a male child above the age of 5 may be removed from a mother to be brought up by either a family or male guardian, rather than the mother. There is no obvious male in Pakistan who would seek to test that system by removing the child from the mother but it is perhaps to a lesser extent a further ingredient within the mix of the Appellant's circumstances.

(5) I accept as Judge Woolley found that the Appellant is well educated and **KA** and **SM** seem to make the distinction between a poorly educated woman dependent upon family for support and an older or educated or financially solvent woman. The Appellant is 30. There is no evidence of a good financial position nor any family that she could turn to for such financial support. Accordingly the distinction that was made in **KA** and **SM** and appears to be the central feature in the findings made by Judge Woolley is her education. However I do not find that a good education is necessarily a guarantee of employment and financially stability. In terms of the Appellant when looking at the medical records and reports that have been provided, I find that her mental health currently is such that it may well significantly

> detract from her ability to put her education to good use in terms of finding employment and financial stability. It would also not be a task necessarily assisted by her having to look after a young child who may continue to exhibit some mental difficulties and behavioural problems. In some respects the overall position of the Appellant in the current circumstances as I assess it would place her in a not dissimilar situation to the poor uneducated woman without financial support referred to within **KA** and **SM**. I do not find the relatively poor provision of mental health in Pakistan necessarily assists the Appellant's position. I also note the respondent's CPIN regarding the manner in which children born out of wedlock are treated concerning registration with the National Database and Registration Authority and potential difficulties thereafter in her gaining access to medical facilities.
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> 26. In all the circumstances and applying the appropriate standard of proof in these cases I find just, that the fresh evidence linked with the reasons behind the dismissal of the Appellant's claim in 2016 are such that it would in my view be unduly harsh for the Appellant to relocate within Pakistan in all the circumstances that now present. I find that as a lone female with a young child given all the circumstances described that she does form part of a particular social group."

22. The judge at para 27 went on to allow the appeal on asylum grounds.

The Secretary of State's Submissions

23. Mr Howells focused the grounds of appeal on two main issues.

24. First, Mr Howells submitted that the judge had failed to make any finding as to whether the appellant was at risk in her home area. He submitted that the judge had found at para 25(3) that there was no threat from the appellant's ex-husband or the man with whom she had had a relationship with in the UK. He submitted that the judge had gone on to consider internal relocation and the impact upon the appellant of her circumstances in other parts of the Pakistan and that, whilst ostracisation and discrimination could amount to persecution, the judge had made no finding that she would face persecution on that basis.

25. Secondly, Mr Howells submitted that the judge had inadequately reasoned, or speculated upon, a number of matters in finding that the appellant could reasonably and without undue harshness relocate within Pakistan. Mr Howells submitted that the judge had failed to give adequate reasons for departing from Judge Woolley's finding in 2016 that internal relocation was an option. Mr Howells relied on four points.

    (i) the judge had speculated on whether the appellant's mental health would affect her ability to pursue employment given her education in para 25(5);

    (ii) the judge had been wrong to discount the availability of shelter or refuge accommodation for the appellant in para 25(4). The judge's comment that it

was not an "ideal situation" did not equate her circumstances being unduly harsh or it being unreasonable for her to live in such circumstances;

(iii) in relation to the availability of shelter or refuge accommodation, having recognised in para 25(5) that there was no obvious male in Pakistan who would seek to remove the appellant's child from her, the judge was wrong to take into account as a "further ingredient within the mix of the appellant's circumstances" that there was evidence that male children above the age of 5 might be removed from their mother and brought up by either a family member or male guardian.

(iv) the judge had taken into account the impact of the appellant's mental health but had failed to consider the availability of treatment for her in Pakistan as set out in the Secretary of State's Decision Letter at pages 17 and 18. Whilst he accepted that the level of treatment might not be comparable to that which the appellant receives currently in the UK, there was no reason why she could not access mental health facilities and treatment in Pakistan.

26. Consequently, Mr Howells submitted that the judge's finding that the appellant could not internally relocate was unsustainable.

27. Finally, in response to the appellant's supplemental rule 24 reply, Mr Howells accepted that the appellant was entitled to rely upon Art 8 if unsuccessful in her international protection claim. He accepted that had been raised as a ground of appeal before Judge Lever and the judge had not considered Art 8.

The Appellant's Submissions

28. In response, Ms Butler sought to uphold the judge's findings.

29. First, Ms Butler submitted that the judge had implicitly found in the appellant's favour in respect of the risk to her in her own home area arising from her circumstances as a returning lone woman. However she accepted that she could not point to a specific paragraph or finding by the judge in his determination. She submitted, in effect, that the judge had determined that issue in the appellant's favour when considering her circumstances on return within the issue of internal relocation.

30. Secondly, Ms Butler submitted that the judge's finding in the appellant's favour on internal relocation was sustainable. She submitted that the judge had given adequate reasons for departing from Judge Woolley's finding based, essentially, on the medical evidence relied upon before Judge Lever. She referred me to the psychiatric evidence in the report of Dr Jayawickrama dated 14 October 2019. In particular, she relied upon paras 79 onwards of that report, including para 82 (setting out the appellant's symptoms), paras 84 and 85 setting out her support and treatment needs, para 88 concerning her reliance upon support from professionals, family and friends and the community in Bristol, para 90 in relation to the appellant's limited resilience and adaptability to change and paras 92-93 concerning the risk of deterioration in her health, including risk of self-harm and suicide, if she did not receive adequate

treatment and support. In addition, Ms Butler relied upon two letters relating to the appellant's son, M at pages 20 and 22 from his primary school and nursery school. Those letters refer to M's behavioural problems and mental health issues, including anxiety and stress.

31. Ms Butler submitted that that was good evidence to depart from Judge Woolley's findings. It was sufficient radically to alter the conclusion whether it was reasonable or not to relocate within Pakistan.

32. In relation to the specific points raised by Mr Howells, Ms Butler made the following submissions.

33. First, she submitted that Judge Lever's statement in para 25(5), that the appellant's good education did not necessarily provide a guarantee ofo employment and financial stability, had to be seen in the context of what Judge Lever said about the impact of the appellant's mental health on her ability to seek employment in Pakistan.

34. Secondly, Ms Butler submitted that the judge was entitled to find in para 25(5) that the availability of women's shelters was not necessarily "ideal". She took me to the relevant decisions in KA (domestic violence – risk on return) Pakistan CG [2010] UKUT 216 (IAC) and SM (lone women – ostracism) Pakistan [2016] UKUT 0067 (IAC). She pointed out that the country guidance demonstrated that shelters were in short supply and only a stop gap in any event. Further, the cases demonstrated that a woman may be separated from her child (aged 5 or above) on entering a shelter. She referred me to SM at [61] and [62] and KA at [241] which linked the issue to whether a shelter would accept a woman with a child aged 5 or above. Ms Butler submitted that it was not about whether a child of that age might be taken by a father or family member away from the appellant, but rather whether the shelter would accept a woman with a child of that age. Ms Butler submitted that what Judge Lever said in para 25(4) had to be seen in the light of that country guidance.

35. Also, Ms Butler submitted that Judge Lever had not ignored the evidence of the appellant's mental health.

36. Finally, Ms Butler relied upon Art 8 of the ECHR. She submitted that had not been considered by Judge Lever and, to the extent that it was necessary for the appellant to rely upon Art 8, she was entitled to do so.

Discussion

37. The first issue is whether the judge erred in law by failing to make a finding that the appellant had established a real risk of persecution or serious ill-treatment in her home area. The issue of internal relocation would not otherwise arise.

38. At paras 19 and 25(3), Judge Lever concluded that there was no good reason to depart from Judge Woolley's finding that the appellant had failed to establish that she was at risk from her ex-husband or the man with whom she had had a

relationship in the UK. That finding is not challenged by the appellant now. It cannot be the basis of her asylum claim.

39. Mr Howells accepted that, if established to a sufficient level, the appellant's circumstances, derived from her being ostracised by society or discriminated against as a lone woman with a child born out of wedlock, could establish a real risk of persecution or serious harm. I accept that submission. However, as Mr Howells' submitted, the judge did not go on to make that finding based upon the appellant's circumstances.

40. Despite Ms Butler's spirited defence of Judge Lever's reasoning, it is plain to me that he moved from his adverse finding in relation to any risk from the appellant's ex-husband, family or the man with whom she had a relationship in the UK, to deciding whether the appellant could reasonably and without undue harshness relocate within Pakistan.

41. The judge's reasoning in relation to internal relocation cannot be understood as implicitly including a finding that the appellant's circumstances rose to the required level to establish persecution or serious harm.

42. When referring to Judge Woolley's earlier findings, Judge Lever only referred to his finding in relation to the claimed risk to the appellant from her husband, family, etc. Judge Woolley also made a specific finding at paras 52-54 that the appellant was not at risk on return as a member of a PSG based upon her circumstances and applying the country guidance decision of SM.

43. At paras 20-26, Judge Lever only considered the issue of internal relocation – what he described as the "remaining issue" – and whether internal relocation would be reasonable and not unduly harsh. At para 24, the judge correctly, in the context of internal relocation, noted that it was not necessary that the appellant's circumstances in the place of relocation should "reach the Article 3 level". As the judge said in para 24, it was "on that basis" that he considered the appellant's circumstances in the subsequent paragraphs of his determination. Plainly, the judge considered the evidence of the appellant's circumstances in the context of internal relocation without considering whether those circumstances amounted to serious ill-treatment contrary to Art 3 which would, in practical terms, equate to persecution and serious harm for the purposes of asylum and humanitarian protection.

44. As a result, in failing to make a finding whether there was a real risk of persecution or serious ill-treatment to the appellant derived from her circumstances on return as a lone woman with a child born out of wedlock, the judge materially erred in law in allowing her appeal on asylum grounds.

45. Turning to the issue of internal relocation, it will be helpful to begin with the country guidance set out in the case of SM by reference to the judicial headnote as follows:

> "(1) Save as herein set out, the existing country guidance in SN and HM (Divorced women - risk on return) Pakistan CG [2004] UKIAT 00283 and in

KA and Others (domestic violence - risk on return) Pakistan CG [2010] UKUT 216 (IAC) remains valid.

(2) Where a risk of persecution or serious harm exists in her home area for a single woman or a female head of household, there may be an internal relocation option to one of Pakistan's larger cities, depending on the family, social and educational situation of the woman in question.

(3) It will not be normally be unduly harsh to expect a single woman or female head of household to relocate internally within Pakistan if she can access support from family members or a male guardian in the place of relocation.

(4) It will not normally be unduly harsh for educated, better off, or older women to seek internal relocation to a city. It helps if a woman has qualifications enabling her to get well-paid employment and pay for accommodation and childcare if required.

(5) Where a single woman, with or without children, is ostracised by family members and other sources of possible social support because she is in an irregular situation, internal relocation will be more difficult and whether it is unduly harsh will be a question of fact in each case.

(6) A single woman or female head of household who has no male protector or social network may be able to use the state domestic violence shelters for a short time, but the focus of such shelters is on reconciling people with their family networks, and places are in short supply and time limited. Privately run shelters may be more flexible, providing longer term support while the woman regularises her social situation, but again, places are limited.

(7) Domestic violence shelters are available for women at risk but where they are used by women with children, such shelters do not always allow older children to enter and stay with their mothers. The risk of temporary separation, and the proportionality of such separation, is likely to differ depending on the age and sex of a woman's children: male children may be removed from their mothers at the age of 5 and placed in an orphanage or a madrasa until the family situation has been regularised (see KA and Others (domestic violence risk on return) Pakistan CG [2010] UKUT 216 (IAC)). Such temporary separation will not always be disproportionate or unduly harsh: that is a question of fact in each case.

(8) Women in Pakistan are legally permitted to divorce their husbands and may institute divorce proceedings from the country of refuge, via a third party and with the help of lawyers in Pakistan, reducing the risk of family reprisals. A woman who does so and returns with a new partner or husband will have access to male protection and is unlikely, outside her home area, to be at risk of ostracism, still less of persecution or serious harm."

46. As will be clear, in SM the UT was principally concerned with the issue of internal relocation.

47. At para (2), the Upper Tribunal premised its country guidance on the situation of where "a risk of persecution or serious harm exists in her home area for a single woman or female head of household", and then went on to state that whether internal relocation to one of Pakistan's larger cities is an option depends on the "family, social and educational situation of the woman in question".

48. At para (3), the UT noted that it would "not normally" be unduly harsh to expect a single woman to relocate internally if she could access support from her family or a male guardian in the place of relocation. That does not arise in this appeal as Judge Lever (as had Judge Woolley in the earlier appeal) found that the appellant had been ostracised by her family.

49. At para (5), the UT went on to state that a single woman who is "ostracised by family members and other sources of possible social support", will find internal relocation more difficult and whether it is unduly harsh will be a question of fact.

50. At paras (6) and (7), the UT considered the availability of shelters for single women who have no male protector or social network.

51. At para (6), the UT noted that such shelters may be available for a "short time" and that "the focus of such shelters is on reconciling people with their family networks". The UT also noted that places are "in short supply and time limited".

52. At para (7), the UT noted that such shelters are available for women at risk but that where they have children "such shelters do not always allow older children to enter and stay with their mothers". The UT went on to note that "male children may be removed from their mothers at the age of 5 and placed in an orphanage or a madrasa until the family situation has been regularised". Whether such temporary separation will be disproportionate or unduly harsh is a question of fact.

53. The UT in SM (at paras [61]-[62]) adopted the approach of the UT in the earlier decision of KA citing paras [236]-[242] and paras (iii), (vi) and (vii) of the headnote in KA:

> "61. Dealing with the availability of shelters, and whether it was unduly harsh for internal relocation purposes to expect women to use them, the *KA* Tribunal said this:
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> > "236. We wish to emphasise, however, that what emerges very strongly from the *Safe to Return*? report is that it is not sufficient simply to consider the issue of internal relocation by reference to whether there are available and adequate centres/refuges. Focus has to be not only on the provision but the general position women who make use of such centres will find themselves in the longer term.
> >
> > 237. ... So whilst we think the *Safe to Return*? report draws helpful attention to the need to look at the longer-term situation such women face, we do not find that the evidence contained in this report or the other sources helps us very much in forming a clear picture of how women

victims of domestic violence who have made use of women's centres and refuges then resolve their difficulties in terms of finding places to live and work. The *Safe to Return*? report argues that the position is that in general such women end up being forced to return to their abuser husbands/families or face serious exploitation. But there is very little empirical evidence cited in support of these broad generalisations and, given the numbers of women said to use these services, we would have expected, if the general position was that these centres/shelters routinely failed to end the cycle of oppression the women who turn to them face, that would have been evident in the form of more reported cases in the press or in the Pakistan Human Rights Commission report or in available cases studies. Nevertheless, the uncertain state of the evidence makes it imperative in our view that decision-makers pay particular regard to how they think the individual applicant/appellant will be able to manage getting on with their lives after they have left the centres/refuges.

238. We need to consider further to what extent other factors such as class, age, culture, tribe, religion etc can further modify the position of women victims of domestic violence.

239. It is fairly clear that women who have their own financial means or access to financial help from family members or friends or who are well-educated or professional women are likely to be able to secure residential accommodation. We accept the observation made by the *Safe to Return*? authors that possessing a class status higher up the social ladder does not mean that such women do not still face discrimination and a degree of stigmatisation. However, even the authors themselves accept that if women have financial means they can in general survive (see 6.15) and the evidence is lacking to indicate that such women are in general unable to cope with such difficulties; although clearly some do not cope and some may even find they have lost more than poorer women (7.5.1) .

240. On the other hand, concerning age, it would appear that most centres/refuges do not adequately cater for the needs of young girls on their own (*Safe to Return*?, 6.10) and young adult women are likely to find it more difficult to live alone than others (we note that is also the view taken by the Canadian IRB in December 2007).

241. Another important variable concerns women who have male children over five. From the *Safe to Return*? research, taken together with other materials, we are satisfied that women with boys over five may not be able to find a centre or refuge that will allow them to live together; the boys above this age are placed in orphanages or madrassahs in the area. As described by the *Safe to Return?* report:

> "[On] admittance the mother is informed of this policy and has to then make a choice of being with her sons or accepting a place at the shelter. If the woman chooses to enter the shelter her sons are referred to the local madrassas or orphanages. This practice has not taken into consideration the impact this has on the children who may have been a witness to the violence. Apart from the trauma of

> separation from their mother the children may have specific psychological needs because of their previous experiences in their homes".
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> 242. We do not say that such arrangements are necessarily to be seen as making the mother and her son's relocation unreasonable, only that this may be a factor which has considerable significance when considering the reasonableness of internal relocation."

62. We adopt and rely upon that analysis of *Safe to Return?* The *KA* Tribunal concluded, so far as relevant to the present enquiry, that:

> *"iii. The Protection of Women (Criminal Laws Amendment) Act 2006 ("PWA"), one of a number of legislative measures undertaken to improve the situation of women in Pakistan in the past decade, has had a significant effect on the operation of the Pakistan criminal law as it affects women accused of adultery. It led to the release of 2,500 imprisoned women. Most sexual offences now have to be dealt with under the Pakistan Penal Code (PPC) rather than under the more punitive Offence of Zina (Enforcement of Hudood) Ordinance 1979. Husbands no longer have power to register a First Information Report (FIR) with the police alleging adultery; since 1 December 2006 any such complaint must be presented to a court which will require sufficient grounds to be shown for any charges to proceed. A senior police officer has to conduct the investigation. Offences of adultery (both zina liable to hadd and zina liable to tazir) have been made bailable. However, Pakistan remains a heavily patriarchal society and levels of domestic violence continue to be high. ...*
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> *vi. The guidance given in SN and HM (Divorced women - risk on return) Pakistan CG [2004] UKIAT 00283 and FS (Domestic violence - SN and HM - OGN) Pakistan CG [2006] UKIAT 00023 remains valid. The network of women's shelters (comprising government-run shelters (Dar ul-Amans) and private and Islamic women's crisis centres) in general affords effective protection for women victims of domestic violence, although there are significant shortcomings in the level of services and treatment of inmates in some such centres. Women with boys over 5 face separation from their sons.*
>
> *vii. In assessing whether women victims of domestic violence have a viable internal relocation alternative, regard must be had not only to the availability of such shelters/centres but also to the situation women will face after they leave such centres."*

54. It is clear from SM and KA that the appellant has to be treated as a person who would have no family support on return to Pakistan and, assuming she was at risk in her home area, the issue of internal relocation will be more difficult, given that she has a child, than if she were able to access family support in the place of proposed relocation (see para (5) and (3) of the headnote in SM). The issue is one of fact based upon the evidence.

55. In this appeal, therefore, the appellant's options were *either* to be economically active and support herself and provide her own accommodation *or*, if she were not, to seek support in a shelter or refuge as contemplated in SM and KA.

56. I will deal first with the two points made by Mr Howells in relation to Judge Lever's reasoning in para 25(4) in respect of the availability of shelters.

57. Given what was said in SM that the availability of shelters was short-term and focused on a period of time when reconciliation was sought with an individual's family, and that such places were in short supply (see para (6) of the headnote in SM), there was nothing speculative or unreasonable in the judge's comment that the provision of shelters was "not necessarily an ideal situation".

58. Further para (7) of SM points out that male children may be removed from their mothers at the age of 5 and placed in an orphanage or madrasa, rather than allowed to live with them in a shelter. Whilst Judge Lever may have focused more on whether there was a male family member available who wished to remove the appellant's child, the point remains that the country guidance would place the appellant in a dilemma either to give up her child and live in a shelter or to remain with her child and not have access to a shelter. In my judgment, Judge Lever was entitled to take this situation into which the appellant would be placed based upon SM in his assessment of whether the appellant would have available accommodation through a shelter.

59. For those reasons, therefore, I reject those two specific points relied upon by Mr Howells as demonstrating any error of law in the judge's assessment.

60. Turning now to the appellant's alternative – namely whether the appellant given her education would be able to be active economically and so support herself including obtaining accommodation - that was a relevant factor following SM. But, SM does not draw a hard and fast line between educated single women and those who are not. It recognised that educated single women may be in a better position to obtain employment than those who are not (see paras (4) and (5) of the headnote in SM).

61. Judge Woolley had reached the conclusion that the appellant's education would allow her to find employment and, therefore, put her in a position where she could support herself and her son. Before Judge Lever, the appellant relied upon new medical evidence of the appellant's mental health and the circumstances of M, her son. Judge Lever correctly recognised that was the appellant's case at paras 15 and 24 of his determination.

62. Ms Butler took me to the relevant passages in Dr Jayawickrama's report in which the appellant's mental health is considered, including that she shows symptoms associated with PTSD and suffers from depression and, at times, suicidal thoughts and self-harming. The report also refers to the potential deterioration in her health, mental health without the support she currently has in the UK and if she is not receiving adequate treatment. On that latter issue, the report refers to the appellant saying that she was taking sertraline which is an antidepressant (see para 38 of the report).

63. It was undoubtedly relevant to take into account any impact that the applicant's mental health, or indeed her son's behavioural and other problems, might have upon

her ability to live and be employed and therefore be self-supporting in Pakistan. This was evidence that post-dated Judge Woolley's decision.

64. There was, undoubtedly, evidence of an impact, at least without support or adequate treatment. The judge referred to the evidence, without giving any detail, in his determination (see, for example, paras 6, 7 and 15). At para 25(5), Judge Lever stated that the appellant's "mental health currently" is such that it may well "significantly detract from her ability to put her education to good use in terms of finding employment and financial stability". He also referred to the impact of M's "mental difficulties and behavioural problems".

65. Reading the determination as a whole, it is not clear how Judge Lever concluded that the appellant's mental health would have such an impact on her ability to live and be employed. The judge did not deal with the evidence, which was clearly relied upon by the respondent, that medical treatment needed by the appellant would be available in Pakistan. Mr Howells drew my attention to the evidence set out in the respondent's decision letter at pages 17-18. That evidence, for example, refers to certain anti-depressant drugs being available, including sertraline which is the medication the appellant told Dr Jayawickrama she was taking. That evidence also notes that "a lot of the healthcare is privatised". There was (and is), therefore, an issue of the appellant's ability to access any treatment which is in principle available. Judge Lever did not refer to this evidence other than, in para 25(5), to note "the relatively poor provision of mental health in Pakistan".

66. In my judgment, Judge Lever failed to grapple with the evidence, both from Dr Jayawickrama and from the respondent as to the availability of treatment in Pakistan, when he found that the appellant's mental health would affect her ability to use her education in order to obtain employment as contemplated in SM. A fuller assessment of that evidence might well affect what, if any, impact the appellant's mental health would have and whether internal relocation would be unduly harsh or not reasonable.

67. Consequently, although I reject Mr Howells' submissions in relation to the judge's reasoning concerning shelters in Pakistan, I accept his submissions that the judge failed properly to deal with the evidence concerning the mental health of the appellant (and also concerning M's circumstances) in assessing whether the appellant would be able to obtain employment if she internally relocated. It follows, in my judgment, that the judge erred in law, to the extent I have indicated, in concluding that the appellant could internally relocate.

68. Consequently, the judge's decision to allow the appellant's appeal on asylum grounds cannot stand and I set it aside. The decision must be remade in relation to the appellant's international protection claim and also in respect of Art 8 of the ECHR.

Decision

69. The decision of the First-tier Tribunal to allow the appellant's appeal on asylum grounds involved the making of an error of law. That decision cannot stand and is set aside.

70. Whether the appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal was a matter upon which, if the error of law were established, Mr Howells indicated that he was neutral. Ms Butler initially invited me to remake the decision in the Upper Tribunal but ultimately indicated that she had no strong views, other than, as the appeals process had been ongoing for some time, she was anxious that the appeal should be reheard as soon as practicable.

71. There remain significant factual issues which must be determined on the evidence. The Art 8 claim has yet to be determined at all. Having regard to the extent of fact-finding required and para 7.2 of the Senior President's Practice Statement, I am satisfied that the proper disposal of this appeal is that it should be remitted to the First-tier Tribunal for the appellant's international protection claim and claim under Art 8 to be re-made.

72. The findings of Judge Lever in relation to the appellant's claim based upon a risk from her ex-husband, family or the individual with whom she had a relationship in the UK (at paras 19 and 25(3)) are unchallenged and are preserved. I also consider that Judge Lever's findings in para 25(1) and (2) are unaffected by any error of law and those findings are also preserved. Otherwise, it will be for the judge, on remittal, to make relevant findings on the evidence.

73. The appeal is remitted to the First-tier Tribunal for the decision to be re-made as I have indicated by a judge other than Judge Lever (and Judge Woolley).

Signed

Andrew Grubb

Judge of the Upper Tribunal
20 October 2020