



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/04976/2018

THE IMMIGRATION ACTS

Heard remotely via video (Skype for Business)
On 25 March 2021

Decision & Reasons Promulgated
On 7 April 2021

Before

UPPER TRIBUNAL JUDGE BLUM

Between

SJ
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr A Khan, counsel, instructed by Thomson & Co Solicitors

For the respondent: Ms A Everett, Senior Home Office Presenting Officer

This decision follows a remote hearing in respect of which there has been no objection by the parties. The form of remote hearing was by video (V), the platform was Skype for Business. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

DECISION AND REASONS

Background

1. This is an appeal against the decision of Judge of the First-tier Tribunal Watson ("the judge") promulgated on 2 March 2020 dismissing the protection and human rights appeal of SJ ("the appellant") against a decision of the respondent dated 29 March 2018 refusing her protection and human rights claim.
2. The appellant is a female national of Pakistan who was born in 1990. She and her husband married in Pakistan in 2010. They both entered the UK pursuant to grants of visitor entry clearance on 25 August 2014. They applied for leave to remain outside the Immigration Rules, but their applications were refused. The refusal of the applications led to appealable decisions and both the appellant and her husband appealed to the First-tier Tribunal on human rights grounds. The exact basis of their applications and their appeals remains unclear, but it involved a claimed fear from one or both of their families based on their families' disapproval of the marriage.
3. In a decision promulgated on 14 September 2017 Judge of the First-tier Tribunal Quinn dismissed the human rights appeals of the appellant and her husband. The appeals were advanced, not as protection appeals but as appeals relying on Article 8 ECHR. The decision was therefore determined by reference to the 'balance of probabilities' standard and not the lower 'real risk' or 'reasonable degree of likelihood' standard applicable in protection appeals. Judge Quinn drew an adverse inference against the appellant based on discrepant evidence relating to her instruction of solicitors. Judge Quinn additionally made adverse credibility findings in respect of evidence from the appellant's husband relating to the payment of rent on a property in which the couple had resided. Judge Quinn found that both the appellant and her husband had made false representations to the Entry Clearance Officer in respect of their visitor applications. Judge Quinn found that the appellant's husband would be able to find employment in Pakistan and there was no reason to think that he could not find accommodation in which both he and the appellant could live. Judge Quinn noted, as a matter of significance, that neither the appellant nor her husband had, at that stage, made asylum claims in the United Kingdom. Judge Quinn did not find the reasons given by the appellant's husband for failing to do this to be "at all convincing." The appellant's husband was an educated man but purported not to know about asylum. He claimed during the hearing that he came to the UK because his life and that of the appellant were in danger. He claimed that he had been told by his family to leave his wife or they would kill him. Judge Quinn noted that "it was possible that both appellants were withholding an asylum claim to await the outcome of this appeal." Judge Quinn considered that if the appellant and her husband had a genuine fear of being killed, then there was every reason for them to make an asylum claim as soon as they arrived in the United Kingdom. Judge Quinn stated, "the fact that they had not done so over all the years they have been in the UK has damaged their credibility."

4. Judge Quinn noted the absence of any medical evidence to detail any injuries suffered by the appellant and, in light of the judge's other findings, rejected the appellant's credibility on the issue of violence. Judge Quinn believed that the alleged threat of violence had been fabricated to bolster their claim to stay in the UK. Judge Quinn found that the appellant and her husband were prepared to use any means at their disposal, including deceit, to stay in the United Kingdom. Judge Quinn found that even if the family had disagreed with the marriage she did not find that threats had been made to kill both the appellant and her husband, and even if she was wrong about this the appellant and her husband could relocate within Pakistan as there was no reason to believe that their families could find them in a country with such a large population.
5. Shortly after the dismissal of her human rights appeal and that of her husband, the appellant lodged an asylum application. She maintained, so far as I can tell for the first time, that her mother was an Ahmadi (her father was a Sunni Muslim) and that she and her husband would face persecution in Pakistan because her husband's family became aware that she was Ahmadi. In her asylum interview, conducted on 22 March 2018, she claimed she had never followed her Ahmadi teaching openly (Q 85), that she only had some basic information about the Ahmadi (Q 131 - 134), and stated that her marriage to her Sunni Muslim husband would not be accepted in Pakistan (Q84). I make the observation that the appellant did not mention anything about her husband becoming interested in the Ahmadi faith in her interview, although in his statement of 19 January 2020 the husband claimed (at paragraph 16) to have accepted Ahmadiyya Islam as his religion around mid-February 2018. In her decision of 29 March 2018 the respondent rejected the appellant's claim to have experienced family problems due to her marriage and rejected the appellant's claim to be Ahmadi. The appellant appealed the respondent's decision to the First-tier Tribunal pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002. An initial decision dismissing the appeal was overturned by the Upper Tribunal and remitted back to the First-tier Tribunal for a fresh hearing.

The Decision of the First-tier Tribunal

6. The appellant's case before the First-tier Tribunal was that she had now embraced the Ahmadi faith and her husband had converted to Ahmadiyya. As such they (or at least the appellant's husband) would be considered an apostate. They would face persecution on account of their Ahmadi faith and because their families, and in particular the husband's family, disapproved of the marriage.
7. The judge heard oral evidence from the appellant and her husband, and both were underwent detailed cross-examination.

8. Having set out the relevant legal framework and principles applying to protection appeals, and having directed herself according to the Devaseelan guidelines (**Devaseelan v SSHD** [2002] UKIAT 00702) in respect of Judge Quinn's decision, the judge summarised the decision of Judge Quinn and the evidence before her. In so doing the judge reminded herself, at [17], that Judge Quinn's adverse credibility findings were made by reference to the 'balance of probabilities' standard.
9. The judge made comprehensive adverse credibility findings against the appellant noting, *inter alia*, that neither she nor her husband made any mention of her Ahmadi faith in the appeal before Judge Quinn. The judge found this undermined the claim by the appellant and her husband that they were adherents to the Ahmadi faith [17]. The judge found she could attach little weight to a psychiatric report or to a large number of documents provided by the appellant, some of which were said to have been obtained from Pakistan and some issued by the Ahmadi community in the UK. The judge rejected the appellant's claim to have been assaulted by her husband's family. The judge found that the timing of the protection claim and the dates on which the documentary evidence was produced damaged the appellant's claim to be a genuine and active follower of the Ahmadi faith. The judge was not satisfied that both families refused to accept the marriage in light of her findings in respect of the appellant's veracity and, as the judge only had the appellant's and her husband's own evidence about the alleged assault on her, "and in view of [the judge's] severe doubts about her truthfulness" the judge was not satisfied that the assault occurred [32].
10. Applying **WA (Pakistan) v SSHD** [2019] EWCA Civ 302 the judge was not satisfied that the appellant had any intention or wish to practice or manifest aspects of the Ahmadi faith in such a way that would expose her to a real risk of persecution in Pakistan [34]. The judge found that the appellant had no beliefs that would lead her to practice the faith. Nor was the judge satisfied that any profession of the Ahmadi faith by the appellant in a Facebook account under her 'nickname' would not come to the attention of anyone who would be able to identify her. The judge concluded that the appellant could relocate even if she was fearful of her and her husband's families and that she could relocate to Rabwah where Ahmadis were said in general to feel secure (although no reference was made to **MN and others (Ahmadis - country conditions - risk) Pakistan CG** [2012] UKUT 00389 (IAC) where the Tribunal held that internal relocation to Rabwah is not generally reasonably open to an Ahmadi who wishes to openly practice their faith). The appeal was dismissed.

The challenge to the judge's decision

11. Permission was granted on three of five proposed grounds. The principle ground contended that the judge erred in not making any finding in respect of the evidence from the appellant's husband. The other two grounds related to a

failure to make adequate findings in respect of the Facebook evidence and a failure to apply the cases of **MN and others (Ahmadis – country conditions – risk) Pakistan CG [2012] UKUT 00389 (IAC)** and **HJ(Iran) v SSHD [2010] UKSC 31**. In granting permission to appeal Upper Tribunal Judge Grubb explained that the judge did not appear to have made any finding in respect of the appellant’s husband’s evidence when concluding that the appellant was not credible. Judge Grubb found it arguable that, in reaching an adverse credibility finding in respect of the appellant, the judge erred in law by not making any finding in respect of the appellant’s husband who gave oral and written evidence before the judge supportive of the claim.

12. At the commencement of the ‘error of law’ hearing I raised with the representatives a concern I had with the decision that derived from the first ground, but which I considered was, in any event, a ‘Robinson obvious’ point (**R v Secretary of State for the Home Department, ex p Robinson [1998] QB 929**). Absent any clear and express assessment or findings in respect of the husband’s claimed conversion to the Ahmadi faith, it was not possible to determine whether his conversion was genuine and whether he would face any risk of ill-treatment in Pakistan either on account of being or perceived to be an apostate, or on **HJ(Iran)** principles if he wished to practice and manifest his faith openly, and whether any real risk of persecution to the husband would consequently entail a risk to the appellant herself. Ms Everett indicated her agreement with this observation, and indicated that she considered the first ground of appeal to be the strongest ground. She accepted that the husband’s evidence was potentially corroborative of the appellant’s account, that there were no findings in respect of the husband’s evidence, and no clear reasons were given by the judge if she had rejected the husband’s evidence as incredible. In these circumstances it was not necessary to hear full argument from Mr Khan. I indicated that I would allow the appeal.

Discussion

13. It is clear from the judgment that the judge did not find the appellant to be a credible witness. The judge gave fairly comprehensive reasons for so doing, ones that were rationally open to her. The difficulty with the decision is that there are no clear findings, adverse or otherwise, in respect of the husband’s evidence. Whilst the judge did state at [17] that she found the failure of the appellant and her husband to mention the Ahmadi faith as a reason for their fear of return to Pakistan to undermine the claim that “they” were adherents to the Ahmadi faith, there is little other evaluation of the husband’s evidence. At no stage of the decision does the judge expressly engage with the husband’s evidence which corroborated the appellant’s claim and which indicated that he had, *prima facie*, converted to the Ahmadi faith. For example, the claim that the husband’s family assaulted the appellant was rejected because the judge had “severe doubts” about the appellant’s truthfulness. There was no reference to the husband’s evidence. Although the husband had been disbelieved by Judge

Quinn, this was in the context of a human rights claim with a high standard of proof. The judge did not engage with any of the evidence supportive of the husband's claim to have converted to the Ahmadi faith, none of which was before Judge Quinn. Whilst it may sometimes be possible to infer by necessary implication that a judge has made adverse credibility findings in respect of a witness, I am not satisfied, having read the decision as a whole, that it is possible to do so on this occasion.

14. Whilst it may well have been open to the Judge to have attached little weight to the husband's evidence, especially given his marital relationship and the findings of Judge Quinn, it was nevertheless incumbent on her to provide at least brief reasons for so doing. The fact that his evidence was self-serving and in support of a family member did not mean that it was incapable of lending weight to the appellant's claim (**R (on the application of SS) v SSHD ("self-serving" statements)** [2017] UKUT 00164 (IAC)). The judge's failure to expressly consider or make any findings in respect of the husband's evidence has consequently materially undermined the sustainability of the adverse credibility findings in respect of the appellant.
15. Moreover, although the judge found that the appellant would not act in a way that would expose her to persecution on account of her association with the Ahmadi faith, the judge made no findings as to whether the husband was a genuine convert to the Ahmadi faith, and, if so, whether he would wish to practice and manifest his faith openly. Nor was there any finding or assessment as to whether the husband would be an apostate, or would be treated as an apostate (there was, for example, no reference to the Facebook page in the husband's actual name showing him with the Supreme Head of the Ahmadiyya Association). Although the protection claim and related appeal were brought by the appellant, if there was a real risk that her husband would be subjected to serious ill-treatment on account of his Ahmadi faith (if, of course, it was accepted that he was a genuine convert) then this would clearly have a serious bearing on the appellant's own safety, and on the Article 8 relationship between her and her husband. I am satisfied, for these reasons, that the decision of the First-tier Tribunal must be set aside.

Remittal to First-Tier Tribunal

16. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 18 June 2018 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:
 - (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

17. Although this appeal has already been remitted once before to the First-tier Tribunal, I am persuaded that it is appropriate to once again remit the appeal. The judge's failure to make any clear findings in respect of the husband's evidence has rendered the adverse credibility findings made in respect of the appellant unsustainable. In these circumstances there will need to be a full re-assessment of all the evidence rendering it appropriate to remit the matter back to the First-tier Tribunal for a full fresh (de novo) hearing, all issues open.

Notice of Decision

The making of the First-tier Tribunal's decision involved the making of an error on a point of law requiring it to be set aside.

The case will be remitted back to the First-tier Tribunal for a de novo hearing before a judge other than Judge of the First-tier Tribunal Watson.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the respondent in this appeal 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 respondent and to the appellant. Failure to comply with this direction could lead to contempt of court proceedings.

D. Blum

Signed
Upper Tribunal Judge Blum

Date 26 March 2021