

AJB
Heard at Field House
On 30 August 2002

APPEAL NO HX28775-2001
NL (Mental Illness-Support for
Family) Pakistan CG [2002]
UKIAT 04408

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

26-9-2002.....

Before:

Mr D K Allen (Chairman)
Mr A Smith

Between

NEELOFUR LIAQUAT

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan, who has been granted leave to appeal to the Tribunal against the determination of an Adjudicator, Mr L V Waumsley, who dismissed her appeal against the respondent's decision refusing to vary leave to remain and refusing asylum.
2. The hearing before us took place on 30 August 2002. Ms J Okoh, a solicitor of Austin Collar Fitzpatrick, instructed by Bajwa & Co., appeared on behalf of the appellant, and Mr M Pichamuthu, of the Home Office Presenting Officer's Unit appeared on behalf of the respondent.
3. Ms Okoh relied on the grounds of appeal. She argued that the appellant's husband was likely to track her down and possibly kill her. She took us to the CIPU Report of October 2001, at paragraph 5.3.95. There was greater risk now from her husband, given that she had left him, together with two of his children. With regard to the possibility of internal relocation, it was rare to be a single woman in Pakistan with

children and it would easily draw attention to her and it would be easy for her husband to track her down. Also, she was mentally ill and not stable enough to take care of herself and needed adequate protection from the State, but it was not willing to provide. Her illness was a result of her fear of her husband. She had previously attempted to commit suicide. Even if she were able to hide from her husband, she would not have liberty to move around and this was contrary to her rights under Article 8 of the Human Rights Convention.

4. Mr Pichamuthu argued that there was not a real risk of serious harm. The fact that the appellant had left two of her children alone, indicated that the violence might not be as bad as was made out. The appellant would be returned to a major city. She had last lived in Rawalpindi. And unlike Shah and Islam she was not likely to be accused of adultery on return. The Adjudicator had accepted that she would have difficulties, but they did not amount to persecution. Also, there was some evidence of improvement in the attitude of the Pakistani Government to women. He referred us to a document that had been put in concerning the National Commission on the Status of Women, which among other things involved a review of all laws, rules and regulations affecting the status and rights of women and monitoring the mechanism and institutional procedures to address violation of women's rights. He referred us to the CIPU Report which, among other things, referred to a Crisis Centre for women in distress which was opened in 1997 in Islamabad and also the fact that, as was pointed out in paragraph 5.3.88 of a Report, Pakistani women can obtain legal and medical assistance as well as consultation services from various centres in Islamabad, Karachi, Rawalpindi and Lahore. There were medical facilities within Pakistan where she could be treated for her mental illnesses.
5. By in way of reply, Ms Okoh argued that the fact that the two children were left behind, did not mean the husband was not violent. As regards return to a city, she was not in a mental state to know her whereabouts. The Crisis Centre referred to at paragraph 5.3.97 of the CIPU Report, had only served 75 women in the year 2000, which was not sufficient for the appellant on return. It would not give her the safety she deserved. Even if she were returned to Islamabad, she would have not just the problems of settling in a new city, but also the need for medical care, because of her mental state and had the three children to look after.
6. We reserved our determination.
7. The Adjudicator found the appellant to be credible. He therefore accepted the history that she had claimed of domestic violence on the part of her husband who, from about 1984 onwards beat slapped and kicked her, threatened her with a knife, cut her on her arms and feet, burnt her with cigarettes and hit her with a chair fracturing her collarbone. She claimed that the children had also been frequent

victims of his brutality. There is some medical evidence to indicate scars on two of the children which were consistent with claims that they had been beaten by their father. The Adjudicator also accepted that, if the appellant returned to her husband's house, the abuse that she had experienced would resume and it would be likely to continue for the foreseeable future. He took account of medical evidence concerning the appellant which, among other things, contained a diagnosis in the following terms:

"Mild cognitive with schizophrene due to poor glycemic control (Left 06.20F06.7)"

8. The Adjudicator accepted that there was a Refugee Convention reason in this case, following the decision in the House of Lords in Shah and Islam, but distinguished that case on the basis that an essential element missing was the threat of violence or false accusations of adultery from the appellant's husband and/or his associates. He considered the human rights issues and concluded that, though the appellant would be returned as a woman with mental health problems and with three children, that her return would not cross the high threshold that is applicable in Article 3 cases.
9. We consider first the Refugee Convention issues in this case. It must be accepted that there is a Refugee Convention reason, in the light of the conclusions of the House of Lords in Shah and Islam. In this context though we note the document put in by Mr Pichamuthu concerning the National Commission on the status of women, which is indicative of some improvement in the attitude of the Pakistani Government towards the position of women. Among other things, the Commission has the function of reviewing all laws, rules and regulations affecting the status and rights of women and to suggest repeal amendment or new legislation essential to eliminate discrimination, and also to monitor the mechanism and institutional procedures for redress of violation of womens rights, individual grievances and facilities for social care. Although this is a welcome development, we consider that the position remains that women are discriminated against by the society in which they live as a group and are unprotected by the state in Pakistan. We agree that if the appellant were to return to her husband's home, she would be at clear risk of treatment amounting to persecution. We note from paragraph 5.4.38 of the CIPU Report for October 2001, that among groups with a limited internal flight alternative are women. It is said that many fled from rural areas to the cities if their economic circumstances permit, but even there, they may not be safe from the families or religious extremists. Clearly, it would be inappropriate for the appellant to be returned to Rawalpindi. We do not consider that there is a real risk that she would come to her husband's attention if she did not return to Rawalpindi. We consider that it is unduly speculative to suggest that in some way he would be able to track her down, or news of her location would come to him. As had been pointed out, Pakistan is a large country with a very

sizable population, and we consider that if the appellant were returned to Islamabad or Lahore for example, that there is no real risk that she would come to her husband's attention. As such, and bearing in mind that the basis of her fear is her husband's persecutory behaviour, we consider that the Refugee Convention claim is not made out.

10. We turn to the Human Rights Convention claim. The appellant would return to Pakistan a women with some mental health problems and accompanied by three children, aged as of now, respectively, 17, 7 and 5. Unfortunately, the appellant's representative did not see fit to provide us with a bundle of any kind, and in particular, we have not been provided with any up to date medical evidence. All we have is the various references to the medical reports contained in the Adjudicator's determination. It seems that the main report of Dr Behre is dated 30 October 2001, and we consider it to be lamentable that we are hearing this appeal nearly ten months later and no more up to date evidence of the appellant's mental state has been provided. We note that there is also a small bundle of letters from the GP concerning the appellant and her children. We have described above the final diagnosis given by Dr Behre. There is reference which we gleaned from the Adjudicator's determination, to her behaviour having been observed when she had become paranoid with auditory and visual hallucinations. There was an impression of a psychotic episode. There was an incident when she was seen to be trying to strangle herself with a scarf and she said that she was being strangled by people whom her husband had sent to kill her. There is some concern as to whether she was intentionally taking too much insulin as she was having hypos. It seems that by 29 October 2000, a measure of recovery had taken place, as is described in paragraph 23 of the Adjudicator's determination.

11. We have been provided with no evidence as to the extent to which the appellant could be treated on return to Pakistan for her ailments. The Adjudicator, at paragraph 41, made it clear that he had not been shown evidence of the medical treatment which the appellant required would not be available for her in Pakistan and that therefore, he proceeded on the basis that the medical facilities which she required, were available to patients in her condition. It remains the case that there is a lack of evidence in this regard.

12. We note from the CIPU Report that domestic violence is a widespread and serious problem in Pakistan. There is a Crisis Centre for women in distress which was opened in 1997 in Islamabad and during 2000, that Centre served for 75 women. There is no indication as to whether this caused significant problems with regard to people (if any) unable to be served by the centre during that period. We note that a further Centre in southern Punjab opened during 2000. We note also that Pakistani women can obtain legal and medical assistance as well as consultation services from various centres, including ones in Islamabad, Karachi and Lahore.

13. We accept, as did the Adjudicator, that the appellant would experience difficulties on return as a single woman accompanied by one, fairly young and two young children. She clearly has mental health problems, although as we have noted above, there is a significant lack of up to date medical evidence. There is some indication from the final diagnosis that her problems may, at least in part, be connected to her diabetes. We bear in mind also the high threshold in Article 3 cases as it was said to be the case by the European Court of Human Rights in Bensaid. In our view, the appellant's case on the evidence as it is before us, does not cross that threshold. There is evidence as we have described above of support for a person in the appellant's condition on return to a city such as Islamabad, and we do not consider that the medical evidence such as it is shows that she is in a state where, as it was suggested by Ms Okoh, that she cannot care for herself and therefore would not be able to care for her children. As such there would be no breach of her Article 3 or Article 8 rights on return.

14. We conclude that on the evidence as it is before us, that the appellant has not made out her case and as a consequence this appeal is dismissed, on human rights as well as on Refugee Convention grounds.

**D K Allen
Chairman**