



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01463/2018

THE IMMIGRATION ACTS

Heard at Manchester CJC

On 15 January 2019

Decision & Reasons

Promulgated

On 13 February 2019

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**J1
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Jagadeeshan, Counsel

For the Respondent: Mr Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Pakistan born in 1975. He has a wife and three children. The children were born in 2012, 2014 and 2016 respectively. The wife and children are all citizens of Pakistan as well.
2. I have made an anonymity direction because this decision refers to the circumstances of three children.

3. The appellant has appealed against a decision of the First-tier Tribunal ('FtT'), dismissing his appeal that sent on 12 March 2018.

Background

4. The appellant arrived in the United Kingdom ('UK') on 24 March 2006, having been granted a visit visa but overstayed. He made a further application for leave to remain in 2011 but that was rejected.
5. The appellant's wife entered the UK on 6 January 2012 having been granted entry clearance as a student. They began a relationship very quickly and married on 17 July 2012. They gave birth to their first child on 12 October 2012 some three months after their marriage. On 3 October 2013 the respondent curtailed the wife's visa. On 18 August 2014 the appellant's wife claimed asylum with the appellant and the eldest child as her dependants. The appellant's wife gave birth to a second child in November 2014. The respondent rejected the appellant's wife's asylum claim and the FtT dismissed her appeal in a decision dated 9 July 2015.
6. The appellant made his own application for asylum relying upon a very similar claim to that provided by the wife. In summary, they claim they entered a 'love marriage' and face the strong disapproval of family members in Pakistan.

2018 FtT

7. The matter came before FtT Judge Maxwell on 28 February 2018. He heard evidence updating the asylum claim and maintaining that family members in Pakistan still viewed the relationship adversely, and had made various threats as a result. Judge Maxwell did not accept the credibility of the claim put forward. He rejected that there had been any threats on the part of family members and any fatwa issued. Judge Maxwell took into account a country expert report dated 6 June 2016 but considered that that did no more than assist in explaining the position if the evidence was accepted to be true. Judge Maxwell concluded at [38] that he found "*nothing in this evidence whether looked at individually or cumulatively that would persuade me the earlier findings of this Tribunal ought properly to be further considered or interfered with*". Neither the appellant or his spouse was found to be a credible witness of the earlier appeal. At [41] Judge Maxwell also said this.

"I find the appellant has failed to prove to the lower standard required as neither he or his spouse are in danger of persecution by or on behalf of either his family or his spouse's family by reason of their entering a love marriage, having sexual relationships prior to any form of marriage and/or not having entered an Islamic marriage."

Judge Maxwell therefore dismissed the appeal on asylum grounds.

8. Judge Maxwell went on to deal with the submission that it would be breach of Article 8 for the family to be returned to Pakistan. He first of all dealt with the submission that there would be very significant obstacles to the family integrating. He rejected that submission observing that the only very significant obstacle claimed to exist related to the behaviour of the respective families and he had rejected that evidence when dealing with the asylum claim. In relation to the position of the children the judge said this:

“[52] Looking at the children the eldest of these is now aged 5 years and 5 months. The youngest is still a baby. No evidence has been produced to suggest that they would not continue or enter education in Pakistan or that there will be any particular difficulties facing any of them.

[53] The best interests of these children are served by remaining with the family unit with their parents who based on my conclusions above are perfectly capable of living safely and securely in Pakistan.”

Appeal against 2018 FtT decision

9. The appellant applied for permission to appeal against the FtT’s decision on one ground only: the FtT failed to carry out a full best interests assessment of the children but in particular failed to consider that the eldest child was conceived before the marriage of her parents and may face huge social stigma and other difficulties as a result.
10. Permission to appeal was initially refused by FtT Judge Davidge in a decision dated 6 April 2018 but granted by Upper Tribunal Judge Coker in a decision dated 7 September 2018. Judge Coker observed it to be arguable that the FtT failed to address the evidence of the country expert in relation to the eldest child.
11. In a Rule 24 response dated 7 November 2018 the respondent opposed the appeal submitting that the FtT had directed itself appropriately. The respondent also submitted that the FtT correctly pointed out that the child was born when the parents were married. As such the child was not born out of wedlock and there would therefore be no risk for the child.

Hearing

12. At the hearing before me Mr Jagadeeshan relied upon written submissions which mirrored the grounds of appeal. Like the grounds of appeal, Mr Jagadeeshan focussed upon the circumstances of the eldest child. Mr Jagadeeshan invited me to note that FtT Judge Maxwell accepted that the eldest child was conceived in January

2012, that is prior to her parents marrying on 17 July 2012. It was submitted that the FtT failed to address the submissions and the evidence to the effect that the eldest child would face significant deleterious consequences as a result of this and that should have informed the best interests assessment that was undertaken.

13. Mr Jagadeeshan took me to the Country Information and Guidance '*Pakistan Women Fearing Gender Based Harm/Violence*' dated February 2016 ('the CIG'), to support his submission that the FtT was obliged to address the difficulties that a child who was conceived prior to her parents' marriage would face. The country expert report touched upon the issue at paragraph 16 but Mr Jagadeeshan acknowledged that the report did not add very much given the way in which it was worded. Mr Jagadeeshan submitted that it could not be said that had the FtT taken into account the evidence contained in the CIG that the same outcome would have been inevitable.
14. Mr Tan relied upon the Rule 24 response. He emphasised that although a sub-heading in the CIG referred to 'Children Conceived or Born outside of Marriage' the substance of the material only dealt with illegitimate children and not with children conceived outside of marriage. For those reasons Mr Tan submitted the FtT did not make any error of law because there was simply no evidence available as to any real difficulties to be faced by those children conceived out of marriage.

Error of Law Discussion

15. Although the FtT addressed the children's circumstances and best interests briefly, given the limitations of the evidence that was available, there was an adequate consideration of best interests. As the FtT noted the children were very young, the eldest being 5 and the youngest still a baby. Although they were born in the UK, both their parents lived for a lengthy period in Pakistan and were able to return to Pakistan without any significant difficulty. The FtT found there to be no evidence to suggest there would be any particular difficulties facing any of the children. The argument on behalf of the appellant is that this conclusion was not open to the FtT for one reason only: the contents of the CIG at 9.2. I set that out in full:

"9.2 Children conceived or born outside of marriage

9.21 As sexual relations outside of marriage is strictly prohibited under the 1979 Hudood Ordances having a child outside of marriage caused huge social stigma in Pakistan. Deutsche Welle noted in a report dated 21 April 2015 that in Pakistan abortion is illegal and so is adultery creating a situation where hundreds of children born out of wedlock are secretly killed each year. Their bodies are literally thrown out with the garbage. Illegitimate children were referred to as harami meaning forbidden under Islam. They do not have rights of

inheritance and could not be registered with the National Database and Registration Authority – NADRA (except when abandoned or in the care of a registered orphanage) without providing the father’s name. Not having an ID card cause difficulties in accessing government-run services. Khan and Piracha a consultancy firm in Islamabad stated the requirement for ID card is becoming increasingly vital for gaining access to admission to educational institutions. Employment both in the private and governmental sectors and in all practical day-to-day affairs such as access to travel by air telephone connections etc. Any access to healthcare in the social welfare/governmental sector will also be dependent on production of ID card. However so far production of ID card is not required for obtaining healthcare in the private sector.”

16. It is clear from this passage that no reference has been made to the position of children conceived outside of marriage but who at the time that they are born are legitimate children. Indeed, the reference to children not being registered is predicated upon the inability to provide the father’s name. There could be no submission in this case that the eldest child would not be viewed by family members and the authorities as the legitimate child of her parents. As Mr Jagadeeshan accepted, the eldest child is legitimate. Neither could it be said that the father’s name could not be provided for obvious reasons. Although the sub-heading refers to both children conceived or born outside of marriage there was simply no evidence to support the proposition that children such as the eldest child, who was conceived prior to her parents’ marriage would face any real difficulties in Pakistan. Mr Jagadeeshan emphasised that there was no differentiation between the two categories of children. Whether there has been a mistake in referring to children conceived outside of marriage in the sub-heading or not, the FtT could only act and consider the evidence that was before it. The evidence relevant to these three legitimate children was very limited indeed.
17. Given the lack of clarity and absence of any evidence regarding the position of those children conceived before their parents’ marriage, one might have expected the country expert instructed in this case to clarify the matter. Yet, the country expert’s report makes no attempt to clarify 9.2 or 9.21 of the CIG. Rather it says only this at [16]:

“I note that Mrs [K] claims that first entered into an illicit relationship with Mr [I], got pregnant and then the couple got married. She claims that her family and in-laws were aware of the situation. I am told her first-born child that is her daughter’s birth certificate carries the date of birth which is just three months subsequent to the date mentioned on her marriage certificate. Hence it is suggested to me that this would alert those concerned or the authorities of illegitimacy of the child and may result in prosecution of the couple under Zina laws in Pakistan. I note they now have two children together.”

18. Mr Jagadeeshan fairly did not rely upon that passage and did not suggest that the FtT erred in law in failing to do so. He was right to take that position. The passage is entirely unclear. First, it seems to be said that the eldest child was born as an illegitimate child, she was not, she was born after her parents' marriage. Secondly, no reference is made whatsoever to the CIG evidence. Thirdly, no conclusions are reached, no sources are provided reference is merely made to risk being suggested to the expert. At [17] the country expert goes on to make reference albeit not in a particularly clear way to cases which are registered against married couples or women for committing Zina with their husband post or prior to the marriage and says that there are no such cases. That gives the clear indication that where those who had an extramarital relationship go on to get married, they are not prosecuted under the Zina laws. That is consistent with the remainder of the report which focuses upon families being the main initiator of prosecutions in this context.
19. There was therefore no cogent or credible evidence before the FtT that the eldest child would face any particular difficulties as a result of being conceived prior to her parents' marriage. The FtT was aware of the circumstances of her conception and birth having referred to that expressly at [23].

Conclusion

20. The evidence was wholly insufficient to support the proposition that was being made in relation to the eldest child. It follows that the FtT decision does not contain an error of law.
21. Even if there was some evidence to suggest that there might be difficulties for the eldest child and as such the FtT was required to engage with that evidence, I am satisfied that the same outcome would have been inevitable. The child would be returned with loving parents, who can on the FtT's findings, rely upon the support of the wider family members. Any difficulties as a result of her conception prior to her parents' marriage would not be significant in the context of that extensive network of support.

Notice of decision

22. The FtT decision does not contain an error of law and I do not set it aside.

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 him or any member of their 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

UTJ Plimmer

Upper Tribunal Judge Plimmer

30 January 2019