



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

Appeal Number: HU/19236/2018

THE IMMIGRATION ACTS

**Heard at Birmingham
On 6 March 2020**

**Decision & Reasons Promulgated
On 27 April 2020**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

**BUSHRA [K]
(ANONYMITY NOT DIRECTED)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Alam (Counsel)

For the Respondent: Mrs H Aboni (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. On 30 August 2018 the Secretary of State decided to refuse to grant leave to remain in the United Kingdom (UK) to the claimant. She appealed to the First-tier Tribunal (the tribunal) which, following a hearing of 15 April 2019, dismissed her appeal. In a decision of 9 January 2020, I set aside the decision of the tribunal and issued directions for a rehearing of the appeal in the Upper Tribunal. I did not preserve any of the findings and conclusions of the tribunal. I held a hearing on 6 March 2020 so that I could hear evidence and submissions concerning the way in which I should remake the decision. That hearing

proceeded as scheduled and representation was as stated above. I am grateful to each representative.

2. By way of background, the claimant was born on 10 January 1987 in Pakistan. She is a national of that country. She entered the UK on 7 August 2007 having obtained entry clearance to do so on the basis of her marriage to a person who was either a British national or a person permanently settled in the UK. She claims to have been a victim of domestic violence and the marriage failed. Her leave expired on 26 July 2009 but on the following day (as I understand the immigration history) she sought further leave as a victim of domestic violence. That application was not considered because she had not paid the appropriate fee. On 21 September 2017 she asked the Secretary of State to grant her international protection. It is unclear to me what happened to that application but it seems she made another one but then failed to attend an interview in connection with it. That second application was either subsequently withdrawn or perhaps treated as having been withdrawn. Be that as it may, she was not granted the international protection which she was seeking. But on 15 November 2017 she made a human rights claim based largely upon her wish to remain in the UK with one Khalid [R] whom she is in a romantic relationship with. Mr [R] is a male British Citizen and is a permanent UK resident. The two have had a religious marriage but not a legal marriage. It was that application which led to the decision of 30 August 2018 referred to above. The Secretary of State's reasoning was contained in a document of that date which I shall call "the reasons for refusal letter". In the reasons for refusal letter the Secretary of State said she was not satisfied that the requirements contained within paragraph 276ADE of the Immigration Rules (a rule which provides for a right to remain in limited and prescribed circumstances on the basis of private life as respected by the content of article 8 of the European Convention on Human Rights) were met. Whilst I am not wholly sure, the Secretary of State seemed to be saying albeit in a way which lacked clarity that the requirements contained within paragraph EX.1 of Appendix FM to the Immigration Rules were not met either (before me the Secretary of State's position was clearly to the effect that the EX.1 requirements were not met) and that it was not thought that there were exceptional circumstances such that the claimant should succeed under article 8 outside the Immigration Rules.

3. At the hearing of 6 March each party was represented. I am grateful to each representative. I had documentation which had been provided at various stages of the appeals process by each party. I heard oral evidence from the claimant, from Khalid [R], from Sobia [K] (the claimant's sister), and from Nasar [H] (the claimant's brother in law). I have considered all of the evidence, both written and oral, in addition to the oral submissions which were made to me at the hearing prior to remaking the decision which I previously set aside.

4. Before me Mrs Aboni pointed out that if the claimant was to succeed under the Immigration Rules on the basis of her relationship with Mr [R], she would need to satisfy paragraph EX.1. That was because she did not meet what are known as the eligibility requirements of the Immigration Rules as a consequence of her unsettled immigration status. Mrs Aboni is right about that and Mr Alam did not seek to argue otherwise. But in this case the converse is also true (again the contrary was not argued) in that if she can bring herself within the terms of EX.1 she will succeed under the Immigration Rules. It is also appropriate to point out that it was not disputed that Khalid [R] is the partner of the claimant as that term is used in EX.1.

5. EX.1 has a very high threshold. In the context of a person seeking leave to remain on the basis of a relationship with a partner, the relationship must be genuine and subsisting, the partner must be a British Citizen or must be settled in the UK, (or here with refugee leave or humanitarian protection, and there must be insurmountable obstacles to family life with that partner continuing outside the UK. EX.2 goes on to clarify that “insurmountable obstacles” means the very significant difficulties which would be faced by a claimant or the partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner. It is for a claimant to show, to a balance of probabilities that those stringent conditions are met.

6. It has been necessary for me to decide what to make of the evidence and to make relevant findings of fact prior to deciding whether those conditions are met or not. But some are not in issue. The relationship with Khalid [R] is a longstanding one (the parties having entered a religious marriage on 17 October 2010) and it was not disputed before me that that relationship is genuine and subsisting. Nor was it disputed that he is a British Citizen. The dispute revolved around the existence or otherwise of insurmountable obstacles.

7. The claimant’s case was that she herself could not return to Pakistan (her country of birth) because she would be ill-treated by others who live there and because she has substantial mental health difficulties which would prevent her living there and would lead to her losing vital support she receives from persons in the UK.

8. The claimant gave confused evidence as to who might seek to harm her in Pakistan. She has provided two different indications in two different witness statements as to precisely which individuals she says will harm her if she is to return. Mrs Aboni argues, in effect, that the inconsistency is damaging to the claimant’s credibility and that I should not accept she fears anyone in Pakistan. I agree. It is reasonable to expect that where a person asserts a fear of particular individuals, that person will be consistent as to which individuals she has in mind. I accept (see below) that the claimant has mental health difficulties but I do not accept that such difficulties explain such a stark inconsistency. So, I find the claimant will not be targeted or harmed by any individuals in Pakistan if she has to go back there. But I do accept the claimant will not have supportive family to return to in Pakistan. I must now treat what she says with caution. But she has been in the UK for a considerable period of time. Ties can diminish over time. She has been consistent about the fact that most of her family members are in the UK and that she will not have family support from anyone currently living in Pakistan. Further, the oral evidence of Sobia [K] which was unchallenged before me was to the effect that the claimant does not have family in Pakistan.

9. As to the claimed mental health difficulties which the claimant is said to experience, Khalid [R] said in oral evidence that the claimant suffers from depression. He used the term “too much depression” and suggested the extent of it meant it would not be possible for her to live in Pakistan. Sobia [K] used the term “excessive depression” and suggested that the extent of the depression meant that the claimant had to be given her medication and also had to be given food and that she (Ms [K]) would sometimes undertake those tasks. Nasar [H] said in oral evidence that if not prompted the claimant would forget to take her medication, that it is necessary for someone to “keep an eye” on her, that she “does not listen to anyone” other than three people being him, Sobia [K] and Khalid [R]. The thrust of his evidence, as I understood it, was that the claimant needs looking after but will

only accept being looked after by the above three people. Although all three of those persons gave evidence none were cross-examined.

10. I have looked for medical evidence of the claimed mental health problems. As to that, there is in one of the bundles of papers before me, a letter of 3 April 2019 written by one Iftekhar Ahmed who is a senior social worker. That letter suggests a background of domestic abuse and a prevailing state of confusion on the part of the claimant when discussing her history in addition to a lack of coherence. But it is also implied in the letter that her mental health has improved somewhat more latterly, albeit it appears from a low base. There is a letter of 28 March 2019 written by one Doctor Prashara who is a GP. In that letter the claimant's mental health problems are described as being "severe depression and psychosis". Reference is made to a history of her having been admitted to hospital "for becoming acutely unwell with regards to her psychosis". It is also said that she "is under regular hospital follow up by consultant psychiatrists". It is further explained that "her illness can be unpredictable and she is at risk of her mental health deteriorating quickly and acutely". Her condition is described as being chronic and long-term and it is said that it may never resolve. Although this letter is brief there can be no doubt that, on the face of it, it paints a picture of serious and ongoing mental health difficulties. There is a letter written by one M Z Iqbal who is a consultant psychiatrist, of 2 April 2019. He confirms the diagnoses referred to above and the history of a hospital admission. He suggests a greater degree of compliance with treatment than does the GP but says she will continue to require psychiatric care and that her prognosis is unpredictable.

11. As to the prospect of Khalid [R] going to live in Pakistan with the claimant so that he might continue to support her and so that the two may enjoy family life there together, he said in oral evidence that doing so would not be feasible. As to that he told me he has a settled lifestyle in the UK, has a home and work in the UK (he is a taxi driver) and would not like to live in Pakistan.

12. I need to make some findings about the above. First of all, I accept that the claimant suffers from psychosis and severe depression. Two qualified medical practitioners (one a consultant) who have been involved with her treatment have clearly said so. I accept that these are conditions of real significance and gravity and remain so even if there has been a degree of improvement as seemingly suggested by the social worker. Mrs Aboni pointed out that the letters I have referred to above are somewhat dated and she expressed the view that more recent medical evidence would have been of more benefit. It is a point worth making. But the evidence is that the condition is an intractable one and there is nothing elsewhere to suggest otherwise. I find that the condition as at the date of hearing is essentially the same as it was when the GP and the consultant wrote about it. I also accept, for the same reasons, that the condition is an unpredictable one with the potential for sudden adverse variation.

13. As to the claimant's need for assistance, I have set out what the witnesses told me about that at the hearing. I have mentioned that what they said, which seems to me to be consistent with the medical evidence, was not challenged by way of cross-examination. Against that background I accept that the claimant requires assistance to ensure she eats, takes her medication and otherwise looks after herself and that she will only accept assistance from the witnesses.

14. I do not accept that Khalid [R] would face real difficulties if he were to go to live with the claimant in Pakistan. All the reasons he gives as to why he could not or at least would

not want to do so are sensible ones. I do not underestimate how difficult it must be for a settled person who has a home and a steady income to give all that up for a much more uncertain future. But I find that he could do it even though doing so would cause him hardship, stress and concern.

15. So, I have now made my relevant findings and the next step is to apply them. I have concluded that in view of the claimant's own difficulties in returning to Pakistan, there would be insurmountable obstacles as the meaning of that phrase is clarified in EX.2, to family life continuing in Pakistan. That is because in my judgement if she does return, even if accompanied by her partner, she will lose the valued and valuable support of her other close family members who gave evidence before me. She will, therefore, be dependent upon one single individual for all her care needs. That will be the same individual who will have to balance attending to her needs as a consequence of her serious medical conditions, with establishing a home and earning a living sufficient for both of them. It will be very difficult to undertake to a proper standard both tasks at the same time. It is true that there will be medical facilities in Pakistan but it might not be controversial to say what is available might well not be of the standard available in the UK and given the chronic and significant nature of the conditions plus the potential for sudden and significant relapse, might well not be suitable for her particular and I think it is fair to say, pressing needs.

16. In light of the above, I conclude that the requirements of EX.1 as clarified in EX.2 are met in this case. It has not been said I should do anything other than allow the appeal under the Immigration Rules if so satisfied. That then is what I do.

17. My having decided the above, it is not necessary for me to consider whether the claimant meets the requirements of any other Immigration Rules nor whether she would, in any event, be able to benefit from article 8 outside the Immigration Rules.

18. I have not granted the claimant anonymity. The tribunal did not do so and I was not invited to consider doing so on behalf of the claimant who has been represented throughout.

Decision

The decision of the First-tier Tribunal has already been set aside.

In remaking the decision, I allow the claimant's appeal from the Secretary of State's decision of 30 August 2018 because she meets the requirements of the Immigration Rules.

No anonymity direction is made.

Signed:

Dated: 21 April 2020

M R Hemingway
Judge of the Upper Tribunal