Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: AA/02822/2015**
AA/02904/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke	**Decision & Reasons Promulgated**
On 23rd February 2016	**On 29th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

BC
YK
(ANONYMITY DIRECTION MADE)

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms A Immamovic of Counsel instructed by Hallidayreeves, Solicitors
For the Respondent: Mr J Parkinson, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. Before the Upper Tribunal the Secretary of State becomes the appellant. However, for the avoidance of confusion and to be consistent, I shall continue to refer to the parties as they were before the First-tier Tribunal.

2. On 5th November 2015 Judge of the First-tier Tribunal Andrew gave permission to the respondent to appeal against the decision of Judge of the First-tier Tribunal Lowe in which she allowed the appeal against the decision of the respondent to refuse asylum, humanitarian and human rights protection to the appellants, who are citizens of South Korea. The first appellant is the mother of the second appellant who is a minor.

3. The grounds of application state that the appeal was allowed on human rights grounds, apparently with reference to Article 3, although the judge, having given consideration to the best interests of the second appellant, reaches no conclusion in that respect and conducts no proportionality balancing exercise. It is also argued that the judge misdirected herself in respect of the sufficiency of protection and the option of internal relocation. In particular, no reason was given for the conclusion that the appellant would be unable to access state protection when a 2014 USSD Report showed the existence of such protection. Further, if consideration was given to internal relocation, the judge found, inconsistently, that the appellant had worked as an assistant English teacher in South Korea but, on the other, there was no evidence of working women being able to tailor their hours of work to school hours.

4. Judge Andrew granted permission on the basis that the judge had given no reasons for the conclusion that the appellant would be unable to avail herself of state protection or would be unable to re-locate.

Error on a Point of Law

5. At the hearing Mr Parkinson confirmed that the respondent relied on the grounds. He indicated that, at page 29 of the Home Office supplementary bundle submitted before the First-tier hearing, was detailed reference to the protection available in South Korea in cases of domestic violence. There was also evidence of a growth in the number of divorces and consequent single parent families. Over 11,000 cases of domestic violence had been reported to the authorities in one month alone. Additionally, the appellant had acknowledged that she had taught young children and so future employment in that capacity with appropriate hours of work would be available to her. He also contended that, although the decision of the judge was detailed, it was not clear what the judge had decided in relation to each element of the claim.

6. Ms Immamovic relied upon her skeleton argument. This argues that the judge properly directed herself in a detailed and well balanced assessment yet fairly eliminating the appellant from membership of a particular social group or opinion such as sufferers from domestic violence. She was entitled to conclude that it would not be reasonable to expect the appellant to relocate with her child given the level of domestic violence she had suffered which had been accepted by the respondent. She further contends that the judge did take into consideration a part of the USSD Report of 2014, particularly at paragraphs 32 and 33, entitling her to conclude (paragraph 34) that there was little objective evidence to show that the government's measures were working or that domestic violence shelter facilities were actually available to the appellant. As to relocation, the skeleton argues that the judge was entitled to conclude that it was contrary to the second appellant's best interests to relocate bearing in mind the violence which that appellant had already suffered at the hands of her father and in witnessing abuse towards her mother, the first appellant.

7. In oral submissions, Ms Immamovic made reference to reasoned conclusions in the decision, which I noted, to show that the judge had given full consideration to objective evidence about the availability of state protection and relocation.

8. Mr Parkinson reminded me that the second appellant was not a British citizen and so a high threshold test had to be met in relation to her human rights claim. Further, the judge has speculated, particularly in paragraph 36, about what might happen when objective material clearly showed the existence of state protection.

9. In conclusion, Ms Immamovic contended that what the judge had concluded in paragraph 35 was not speculation because of the factors which had been considered in paragraph 33 covering, amongst other things, the domestic violence situation as related to women.

Conclusions

10. Bearing in mind the detailed and comprehensive nature of the judge's decision I decided to reserve my own decision on whether or not an error or errors of law were present. My reasons now follow for the conclusion that the decision contains such errors and should be set aside and remitted to the First-tier Tribunal for hearing afresh having regard to the Practice Statement of the Senior President of Tribunals of 25th September 2012 at paragraph 7.2.

11. The decision of the experienced First-tier Judge does, I conclude, contain a considerable amount of speculation as to what would happen if the appellant were to return and came into contact with her husband. In paragraph 35 the judge surmises that the first appellant would have no alternative but to return to live with her husband and would therefore be at risk of renewed domestic violence even though, in the same paragraph, the judge points out that the appellant is highly educated, speaks fluent English and has employment experience in South Korea and so might, I infer, be capable of living independently. The judge's conclusion that, despite such experience, the appellant would be unable to take up employment is unsupported by reference to any specific objective material.

12. The objective material which is examined in paragraph 33 is described by the judge as "relatively scanty" although the existence of the USSD Report of 2014 is referred to in the previous paragraph. It is difficult to see how that report can be described as giving scant information about the relevant issues in this appeal. The report states that there is an independent and impartial judiciary in civil matters including human rights violation. The law defines domestic violence as a serious crime with strong enforcement provisions including restraining orders and significant punishment for breaches. In one month, alone, the Ministry of Justice was handling over 27,656 sexual and domestic violence cases with over 11,000 relating to specific domestic violence leading to the subsequent detention of 228 offenders. There are 33 integrated support centres and a further 25 protection facilities against sexual violence and 27 government operated facilities for migrant women victims of domestic violence. There is, therefore, copious reference to the facilities available for victims of domestic violence which has been identified by the government as one of the "four social evils" it has to tackle. Therefore, I am unable to see how the judge's conclusion that, in effect, the appellant could not avail herself of government protection can be anything other than unsupported speculation. Indeed, as the judge

concedes in paragraph 36, her conclusions there are "only speculation" albeit in relation to the first appellant's parents looking after her child.

13. In my conclusion, it was not open to the judge to find, as she did in paragraph 36, that because of the "collectivist" nature of South Korean society, the appellants would be forced to return to the first appellant's husband sooner or later. Further, in the same paragraph, the judge was clearly wrong to indicate that, even if there were facilities for victims of domestic violence, there was no objective evidence of one.

14. Further, in relation to relocation, it is not clear, from the decision, that the judge has given specific consideration to this option bearing in mind the appellant's educational background and former employment. Whilst the judge refers to country evidence relating to discrimination against females in finding employment and difficulties with care arrangements, these conclusions are, also, no more than speculation. That is because no specific objective material has been identified to show that a single mother would be unable to find employment. Further, the judge does not examine any evidence which would suggest that living in a different area would be unreasonable to expect of the appellants.

15. I also note that the judge has based her decision on the application of Article 3 which protects against the risk of serious harm. In this context it is not clear why the judge did not consider the option of humanitarian protection on the basis that the asylum appeal could not succeed.

16. For the reasons I have given, the decision shows errors on points of law such that it should set aside. As any future hearing will require the evaluation of evidence to the date of hearing it is appropriate for the matter to be remitted to the First-tier Tribunal for a fresh hearing. This accords with the Practice Statement to which I have already referred.

Decision

17. The decision of the First-tier Tribunal shows errors on points of law. I set aside the decision and remit the appeal to the First-tier Tribunal for hearing afresh.

Anonymity

18. As this appeal involves the interests of a child I make the following direction:

DIRECTION REGARDING ANONYMITY – RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellants. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DIRECTIONS

19. The appeal is remitted to the First-tier Tribunal for hearing afresh.

20. The hearing will take place at the Stoke Hearing Centre on a date to be specified by the Resident Judge.

21. The fresh hearing must not be before Judge of the First-tier Tribunal Lowe.

22. The time estimate for the hearing is three hours.

23. No interpreter will be provided for the hearing unless representatives so indicate.

Signed Date

Deputy Upper Tribunal Judge Garratt