



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/09217/2014

THE IMMIGRATION ACTS

Heard at Manchester
On 15 March 2016

Decision and Reasons Promulgated
On 1 April 2016

Before

Upper Tribunal Judge Southern

Between

R.H.

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M. Karnik, counsel instructed by Adamsons Law, solicitors
For the Respondent: Mr G. Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who is a citizen of Pakistan, has been granted permission to appeal against the decision of the First-tier Tribunal (a panel comprising Designated Judge McClure and First-tier Tribunal Judge Meyler: “the panel”), promulgated on 11 March 2015, by which her appeal against refusal of her asylum claim was dismissed.

2. A detailed recital of the claim is, of course, set out in the decision under challenge but, for present purposes, the following summary of the appellant's claim will suffice. The appellant, in respect of whom a number of different dates of birth have been provided, is from Lahore. Her father died many years ago but her mother, four brothers and two sisters remain in Lahore. The appellant was educated to the age of 16 after which she helped out at home but did not work and so was supported by her family. In 2005 she met a man named [WA] who had lived in the United Kingdom for some years and who had returned to attend the family wedding of mutual friends in Pakistan at which they met. A few days later he proposed that they be married and live together in the United Kingdom. Initially, the appellant's mother was against the match, because this man was Sunni and the appellant's family were Shia. However, she consented to the match after the appellant had threatened suicide. A telephone Nikah ceremony took place on 18 January 2007.
3. The appellant remained living with her family in Lahore while arrangements were made to secure her entry clearance to move to the United Kingdom. These arrangements were attended to by a friend of [WA]. On 7 May 2008 an application was made on the appellant's behalf as a family visitor. In that application, on the basis of a passport obtained from an agent that was in the appellant's name but with a different date of birth, it was said that she was married not to [WA] but to someone entirely different, one [MH]. Mr Karnik raises an issue of whether or not the appellant was aware of the deception employed in making this application, which is discussed below. The application was refused but an appeal was successful so that entry clearance was granted and the appellant arrived in the United Kingdom on 9 December 2009, some 2 ½ years after the Nikah ceremony.
4. The appellant's life in the United Kingdom was very different from what she had expected. Her husband's home was a "badly derelict house". Six months later they moved to a flat above a vacant shop, but it was not much better. She was badly treated by her husband. He raped her frequently, beat her and tried to persuade her to work as a prostitute. He brought men to the flat and asked the appellant to have sex with them, but she refused to do so. In May or June 2012 [WA] left, saying he would be away for 8 days but never returned. The appellant, who had been locked up in the house and not allowed to leave managed, two weeks later, to attract the attention of a man working outside and persuaded him to break into the house so that she could leave. She came across a girl speaking Urdu who took her to a Law Centre and subsequently provided her with somewhere to live, but the staff in the Law Centre said that in the absence of evidence they could not help her. The appellant contacted her family in Pakistan but they said they wanted nothing to do with her, because she had "brought shame upon their Shia culture". Her brothers told her that she must not return to Pakistan and if she did "if your husband does not kill you, we will kill you".
5. The panel carried out a very detailed analysis of the evidence. This is set out between paragraphs 15 to 44 of their decision. They found that the appellant was

aware that her circumstances had been misrepresented in the application for entry clearance so that her use of deception damaged her credibility generally. If the appellant was not married to [MH], as was asserted in the visa application and in pursuing a successful appeal, then she secured that entry clearance by deception. It follows that if, on the other hand, she was married to that person, although her evidence is clear that she was not, then her evidence of being married to [WA] could not be true. The panel examined the documentary evidence offered in support of the Nikah ceremony with [WA] but found that no weight could be given to it. Letters from the Registrar and the Mosque, generated in response to written requests from the appellant's solicitors, lacked credibility because both were written on un-headed paper', both were in a strikingly similar format and both contained the same error in the address to which they were sent, that being the appellant's solicitors.

6. The panel made clear that they did not hold against the appellant her delay in claiming asylum
7. The panel did not accept that the appellant was a victim of trafficking. In arriving at that conclusion the panel had regard to a number of factors:

“... the lengthy courtship prior to the marriage, the exclusive cohabitation as a married couple for two and a half years, albeit a very abusive and coercive relationship, and the failure to force the appellant into prostitution despite having had ample opportunity are all strong evidence that runs counter to a finding that the purpose of the marriage and trip to the UK was for the purpose of exploitation. We therefore find that the appellant was not trafficked by [WA].”

Nor did the panel accept that [WA] himself was part of a trafficking network. There was nothing to suggest he had been involved with any other women. The circumstances of his living conditions did not suggest that he was making money from prostitution. A period of over five years had elapsed between proposal of marriage and the appellant's arrival in the United Kingdom. The appellant was 38 years old at the date of the marriage. Although [WA] asked the appellant to have sex with men he brought to the flat, she was able to refuse to do so.

8. After having conducted that lengthy analysis of the evidence the panel arrived at some clear findings of fact. There was no continuing risk from [WA]. He had abandoned the appellant and had simply lost interest in her. Since the appellant had escaped from the flat there has been no contact between them and no suggestion of any attempted reprisals against her family. The panel were satisfied that [WA] had no continuing interest in the appellant.
9. The panel made also a clear and reasoned finding of fact that the appellant would not be rejected by her family, should she return to Lahore. Although the appellant's mother had been against the marriage, she and the appellant's brothers attended the ceremony and the appellant remained living with her family for almost three years after that. Therefore, there was no reason to suppose that she could not return

to live with her family in Lahore where there would be no reasonable likelihood of any continuing hostility from [WA] or his family members.

10. In granting permission to appeal, First-tier Tribunal Judge Lewis considered that two grounds might be arguable. The first was that the panel may have erred in not considering the possibility that the appellant was unaware of, and so not complicit in, the deception used in securing entry clearance as a visitor by falsely representing her marital status. The second ground he considered may be arguable was that the panel may have erred in deciding that no weight could be given to the documentary evidence relied upon in respect of the Nikah marriage. However, he recognised that, even if those errors could be established, it may represent a pyrrhic victory for the appellant because:

“The Tribunal identified multiple credibility issues. So, even if grounds 1 and 2 should prove to have given rise to errors of law, they may not have been material...”

11. In his submissions on behalf of the appellant, Mr Karnik added a third challenge to the decision of the panel, that being that they erred in respect of their assessment of risk on return as a lone woman, given that the appellant on return would be seen as “a potentially destabilising element”.
12. Mr Karnik submits that the panel did not specifically address the possibility that the appellant was unaware of the false statement that had been made in her application for entry clearance as a visitor. In fact the panel said that it was “highly unlikely” that the appellant knew nothing about what had been said in the application. That they did not carry out a more detailed discussion of that issue is wholly unsurprising. The appellant’s case is that, having married [WA], she expected to move to a new life with him in the United Kingdom. It must have been apparent from the time that was passing that there were obstacles to achieving that. The services of an agent were secured to obtain a passport that contained the appellant’s name and photograph but not her correct date of birth and entry clearance as a visitor, after a successful appeal of the refusal by the Entry Clearance Officer. As the appellant may well have been asked questions by immigration officers or others it is impossible to see what would motivate a decision not to equip her with the ability to deliver the “correct” answers, in relation to both the stated date of birth and name of her husband, especially as, if not so equipped, she would provide answers that would cause difficulty and expose the deception that had been used. This is particularly so as she made clear that she travelled alone.
13. In any event, given the findings of fact considered above, including that there was no continuing interest on the part of [WA] and no reason to suppose that the appellant would not be able to return to live with her family in Lahore, even if it were considered to be an error of law for the panel not to specifically examine the possibility that the appellant had no knowledge of the deception practiced, that would be immaterial since the outcome would plainly have been the same.

