Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/07775/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 February 2018	**On 20 April 2018**

Before

THE HONOURABLE MR JUSTICE NICKLIN
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE PERKINS

Between

[P K]
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr G Davison, Counsel, instructed by HSBS Law UK Office (Harbans Singh & Balwant Solicitors)
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS
(extempore judgment)

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 we make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. We make this order because this is a protection case and there

is invariably a risk in cases of this kind that publicity will itself create a risk and because a similar order was made by the First-tier Tribunal and we were not asked to make a different order.

2. This is an appeal against a decision of the First-tier Tribunal dismissing the appeal of the appellant against a decision of the Secretary of State refusing her leave to remain as a refugee or on human rights grounds.

3. Today the appellant was represented by Mr Davison. He did not appear in the First-tier Tribunal, he did not settle the grounds of appeal and I anticipate they would not have been drawn in the way they were if he had had responsibility at an earlier stage.

4. There is no meaningful challenge to the finding that the appellant is not a refugee or to the finding that the appeal should not be allowed on human rights grounds except possibly under Article 8 of the European Convention on Human Rights. The core point is that this appellant has suffered significant violence at the hands of her former husband and has an expressed fear of further violence in the event of her return to India. Those concerns can be addressed by local effective protection or, in the alternative, internal relocation to a part of India where the alleged reach of her former husband does not extend. This is not wishful thinking. The appellant is an educated woman who could be expected to establish herself away from her immediate family in India. These points are made perfectly properly in the Decision and Reasons and to the extent that there is any appeal against those findings we reject the arguments.

5. The Article 8 point is more nuanced and was picked up by Upper Tribunal Judge Bruce when she gave permission. It is that the First-tier Tribunal did not deal satisfactorily with the contention that, in the event of the appellant returning to India, she could satisfy the requirements of the Rules to enter the United Kingdom as a wife. It was arguable that the Tribunal should have asked if in fact requiring the Appellant to return to India to make an application. As was explained by the Upper Tribunal in R (on the application of Chen) v Secretary of State for the Home Department) (Appendix FM – *Chikwamba* – temporary separation – proportionality) IJR [2015] UKUT 189 (IAC), that argument does not get going unless it is a case where the applicant clearly satisfies the requirements of the Rules

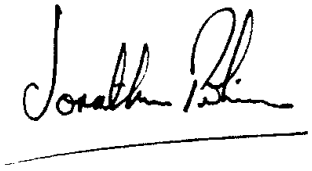
6. We are satisfied that this is not such a case. Indeed, there was some uncertainty before us today whether the applicant would be applying as a wife or as a fiancée. There has been no clear attempt in the witness statement or in the evidence to show compliance with the Rules. It is not possible to look at the witness statements and supporting financial documents and say with any confidence that sufficient earnings are established or have been established to a sufficient time. Really, there is no attempt on the part of the appellant to show that she met the requirements of any relevant Rules. Once that is appreciated then the arguments based on **Chen** or the decision in **Chikwamba v SSHD** [2008] UKHL 40 fall away.

7. The ordinary position is that a person who is in the United Kingdom and wishes to marry should leave, return to his or her country of nationality and make an application under the Rules. As was made plain in **Chikwamba**, mere empty recitation of "it is policy" does not answer a human rights argument and a little more thought is needed. That we very much have in mind but this case does not fall in the category of cases identified in **Chikwamba** and explained further in **Chen** because it is not a case where there is clear compliance with any relevant Rule.

8. It may be that the appellant can satisfy the requirements of the Rules. We are certainly not intending to make any ruling that she cannot. We are simply saying that on the material before us the point is not established and that is a prerequisite to the argument that depends on **Chen** and **Chikwamba** and in the circumstances that ground of appeal also fails and we dismiss this appeal.

Notice of Decision

The appeal is dismissed.



Signed

Jonathan Perkins, Upper Tribunal Judge Dated: 22 February 2018