



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

**Ce-File Number: UI-2022-
003238**
**First-tier Tribunal No:
PA/01359/2021**

THE IMMIGRATION ACTS

**Heard at Birmingham IAC
On the 20 December 2022**

**Decision & Reasons Promulgated
On the 21 February 2023**

Before

**UPPER TRIBUNAL JUDGE HANSON
UPPER TRIBUNAL JUDGE MANDALIA**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SA

(Anonymity direction made)

Respondent

Representation:

For the Appellant: Mr C Bates, a Senior Home Office Presenting Officer.
For the Respondent: Mr Hussain, of Fountain Solicitors (Walsall)

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Barker ('the Judge') promulgated on 24 March 2022 following a hearing at Birmingham.
2. The Judge allowed SA's appeal on both the Refugee Convention and Article 3 ECHR grounds. The Secretary of State challenges the Refugee Convention finding but not that relating to Article 3 ECHR.
3. The Judge accepted the appellant's account of suffering domestic violence at the hands of his father in Bangladesh was credible, accepted a real risk from that source should he return to Bangladesh, found there was no sufficiency of protection, and that internal relocation would be unduly harsh/not reasonable.
4. At [51 - 52] the Judge wrote:
 51. In **K and Fornah v SSHD [2006] UKHL 46**, it was held that the family is the archetypal social group, but where some members of the family face persecution, but not others, the issue of causation will need to be closely scrutinised. Whilst it is not necessary that all members of the social group be persecuted before it can be said that that people are being persecuted for reasons of their membership of that group, it is generally necessary that all members of the group should be susceptible to persecution.
 52. This cannot necessary be said to be the case for this Appellant. However, I am satisfied that as a victim of domestic violence, as is unchallenged by the Respondent, that will bring him within a particular social group for the purposes of the protection offered by the Refugee Convention.
5. The Judge finds that the persecution is that of domestic violence to which the appellant suffered and is at risk of suffering in the future. There is nothing in the findings that show that the appellant is a member of a social group that exists independently of and is not defined by such persecution. As noted in Shah and Islam [1999] UKHL 20, the social group must exist independently of, and not be defined by, the persecution, otherwise anybody persecuted for whatever reason would qualify. In that case women in Pakistan were held to be a social group because the group is distinguished by gender, and they were discriminated against and unprotected by the state.
6. The definition of the social group to which the Judge found the appellant was a member at [52] is too wide and insufficient reasons are given for why the appellant could succeed on this basis. It is not made out, for example, that a victim of domestic violence will be identified as such in Bangladesh or that they will be at risk of persecution as a result of such membership. We invited Mr Hussain to identify the particular social group that the appellant falls within, apart from being the son of the individual that has subjected him to violence. He was unable to do so.
7. The Refugee or Person in Need of International Protection (Qualification) Regulations 2006, Regulation 6, states:
 - (1) In deciding whether a person is a refugee...

- (d) a group shall be considered to form a particular social group where, for example:
 - (i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
 - (ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;
- (e) a particular social group might include a group based on a common characteristic of sexual orientation but sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law of the United Kingdom;

- 8. The Judge’s findings do not establish that victims of domestic violence have such a distinct identity in Bangladesh because they are perceived as being different by the surrounding society.
- 9. We find the Judge has erred in law in a manner material to the decision to allow the appeal under the Refugee Convention. We set that element of the decision aside.
- 10. Following further discussion at the hearing we find that on the facts as found and evidence in this appeal the only basis on which the Judge thought the appellant could succeed, membership of a particular social group, is not made out and as no other basis for allowing the appeal under the Refugee Convention has been shown, we substitute a decision to dismiss the asylum appeal.
- 11. The decision allowing the appeal as removal will be contrary to Article 3 ECHR is unchallenged and shall stand.

Decision

- 12. **The Judge materially erred in law in relation to the Refugee Convention. We set that element of the decision aside.**
- 13. **We allow the appeal as the finding in relation to Article 3 ECHR is not challenged.**

Anonymity.

- 14. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

We make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of SA, likely to lead members of the public to identify him. Failure to comply with this order could amount to a contempt of court.

Signed.....
Upper Tribunal Judge Hanson

Dated 21 December 2022