



IN THE UPPER TRIBUNAL

R (on the application of Muzzana Munir Baloch) v Secretary of State for the Home Department IJR [2014] UKUT 00103(IAC)

Field House,
Brems Buildings
London
EC4A 1WR

5 December 2013

BEFORE

UPPER TRIBUNAL JUDGE ALLEN

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

Between

THE QUEEN

ON THE APPLICATION OF

MUZZANA MUNIR BALOCH

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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For the applicant: Mr A Jafar, instructed by Lee Valley Solicitors appeared on behalf of the Applicant.

For the respondent: Mr P Halliday, instructed by the Treasury Solicitor appeared on behalf of the Respondent.

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JUDGMENT

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1. JUDGE ALLEN: This is an application for judicial review of the decisions of the respondent of 12 October, 26 October and 28 October 2011 refusing to treat further representations made by the applicant as a fresh claim and maintaining her decision to remove her from the United Kingdom.

Background

2. The applicant is a citizen of Pakistan. According to Home Office records she and her husband Muhammad Iqbal Rahi applied together in person for visitors' visas to the United Kingdom, on 14 November 2010. The applicant was issued with a six month visa and entered the United Kingdom on 27 December 2010 with her two sons. On 10 January 2011 she attended with her children at the Asylum Screening Unit in Croydon and claimed asylum, subsequently attending a screening interview on 26 January and a substantive asylum interview on 8 February.
3. Her application for asylum was refused on 18 February 2011 on the basis first that she was married to Muhammad Rahi and not Amjad Iqbal (the latter being her husband's name, according to her) and that in any event she failed all stages of the test in the country guidance case of SN and HM [2004] UKIAT 00283, on the basis that she had not shown a real risk of harm from her husband or, even if there were such a risk, alternatively she had not shown there was no effective protection for her in her home area, or in the alternative she could reasonably relocate elsewhere in Pakistan.

4. Her appeal against this decision was heard by a First-tier Tribunal Judge on 11 April 2011. The applicant was not represented before the judge. Her claim in essence is summarised at paragraphs 21 to 23 of the judge's determination. She said that she had married Amjad Iqbal in 2000 in an arranged marriage. After the birth of their second child in 2004 her husband began to beat her every time she asked him for money. She went to her father but he could not intervene as her husband was considered to be entitled to do what he wanted. However, her father began to pay all her expenses for the house and the children. Her husband left his job and continued to ask her for money and beat her when she refused and also used to beat the children. Her father died in 2009 and then her in-laws threw her out so she moved to her father's house. She said that she lived in the house on her own with her two children after her father died and there were no other family members there. She was asked how she managed for money and she said she had rented out part of her house to tenants so she was not there alone. She would sell jewellery whenever she needed money. Eventually she had run out of money and her friends arranged for an agent to obtain passports and visas for her and the children and on a day in 2010 the agent took her and the children to be fingerprinted and there was another man there who was also fingerprinted. Passports were obtained, the house was sold and she paid the agent some 11 lakhs rupees and brought the rest to the United Kingdom. She did not tell her husband that she was leaving.

5. The judge noted that on inspection her Pakistani passport had been found to be genuine and consequently this was regarded as undermining her claim that an agent "made" her passport for her. He also noted the fact that although she claimed her husband's full name was Amjad Iqbal, her passport named her

husband as Muhammad Iqbal Rahi. Her evidence was that she did not complain to the police at any time because she would have suffered more beatings. During the eighteen months when she lived at her father's house her husband knew that she was living there and the judge noted that at no time did she come to any harm while there. She said she could not seek the protection of the police in Pakistan because they were "useless" and would only help people who gave them money.

6. In his determination the judge said that he did not consider it necessary to embark upon a detailed analysis of the evidence as to the current domestic violence situation in Pakistan because the determinative issue in the appeal was not what could happen to the applicant if her story were true but whether it was true. He found that it was not. He found her evidence to be discrepant and that in any event, even if her account was true, she was not entitled to refugee status.
7. He said that on her evidence she was living for eighteen months away from her husband with her two children in a house that had previously belonged to her father, located some twenty minutes walk from where her husband was living. She came to no harm while living there and there was a police station in the locality where she could seek protection from her husband if necessary but had not done so. He considered that she added to her claim at the hearing in claiming that she had also lived in fear of her in-laws and he did not accept that to be credible given the late stage at which it was mentioned. He considered that if she were genuinely in fear of her husband and in-laws there was no need for her to leave Pakistan and she could have sought protection there. The money she claimed to have raised from the sale of the house would have enabled her to relocate comfortably in various other parts of Pakistan. He did not accept that she

had used an agent to obtain a passport and visa as they were obtained, using a genuine passport, at the Embassy and he was satisfied on the balance of probabilities that her husband was the person named in her passport and not the person she claimed. He dismissed her appeal.

8. Various sets of further submissions were sent in subsequently after the applicant become appeal rights exhausted on 18 May 2011. Further submissions including photographs and other documents were sent on 2 July 2011 and in a letter responding to this on 8 August 2011 the respondent decided that these further submissions did not amount to a fresh claim. Further submissions were sent on 5 September 2011 and again not accepted as amounting to a fresh claim, on 16 September 2011. Further submissions were sent on 15 September 2011 receiving a similar response on 12 October 2011, as was the case also with a letter which also served as a Pre-action Protocol letter sent on 18 October 2011 and responded to on 26 October 2011. On 28 October 2011 the respondent served removal directions on the applicant. She issued her claim for judicial review on 7 November 2011 and the respondent as a consequence cancelled the removal directions.
9. The further submissions of 2 July 2011 included a letter from Asylum Justice, copies of visa application details for the applicant, her children and Muhammad Iqbal Rahi, five photographs, a letter from Muhammad Usman Malik of 16 June 2011 together with a photocopy of an ID card entitled "Punjab Bar Council" and a letter entitled "Affidavit" from Hafiz Muhammad Syed Akthar.
10. The respondent referred to the Devaseelan [2002] UKIAT 00702 guidance and also the principles in Tanveer Ahmed [2002] UKIAT 00439 in assessing the documentation. As regards the

photographs, it was noted that they were not dated and were submitted some eight months after the asylum claim, and no reasonable explanation had been provided as to how the applicant came to be in possession of them or indeed of the two letters from people who confirmed that they had participated in the marriage ceremony of the applicant and Amjad Iqbal. It was noted that no evidence had been provided that these people were who they claimed to be or indeed that they attended the applicant's wedding ceremony as she claimed.

11. Reference was made to what had been said by the judge in his determination that the marriage certificate was a document that could be obtained easily and he noted it was obtained shortly before the hearing and he found it, having considered the evidence in the round, not to be credible. The letter from Asylum Justice contained assertions by the applicant that she was indeed married to Amjad Iqbal and that the photograph of the man shown on the visa application was clearly not the man shown in the photographs she had submitted. Consideration was also given by the decision-maker to Article 8 issues in the light of the Razgar test, including assessing the position of the children under Section 55 of the Borders, Citizenship and Immigration Act 2009.

12. Attached to the letter of 5 September 2011 were a number of photocopies including photocopies of certificates from a child specialist and a school principal, a certificate from Silver Lining, an Addiction and Psychological Treatment Centre, a photocopy of a fatwa against the applicant, three photocopies of ID cards for Mohammed Usman Malik, photocopies of birth certificates for GM and AK (the two children) along with translations and a photocopy of a passport for Iqbal Amjad. There was also a photocopy of the Daily Aftab Ahur Newspaper with three missing people extracts along with translations

which stated that the applicant's husband had placed the adverts as she and the children went missing on 27 December 2010.

13. With regard to this last document the decision maker commented that the original document had not been provided, the photocopies had been pieced together instead of displaying the original articles in their original format and the translations did not provide any details of the translator or indeed of his qualifications. The letter from the principal of the school referred to the children and said that they were mentally disturbed due to their father being addicted to drugs and that he used to beat their mother. It was noted that this document was dated 10 August 2010, some four months before the applicant left Pakistan and the comment was made that no reasonable explanation had been given as to why there was a delay in producing it and it was issued over a year ago and the original had not been provided.
14. In the letter from Dr Amir, a child specialist who said he was the family doctor of Amjad Iqbal and his family, it was said that the applicant brought AK to him and he had to treat him for his injuries and said that "his father beats him when he was addicted to drugs". It was commented that this letter was dated 25 April 2010, nearly eight months before the claim to asylum in the United Kingdom, and again the comment was made that she had not provided any reasonable explanation for the delay in producing this document or why indeed it was requested.
15. As regards the letter from "Silver Lining", an addiction and psychological centre in Sheikhpura, which said that Mr Amjad Iqbal remained under treatment there from 3 June 2010 to 25 May 2011 and was admitted to the hospital from 22 March 2011

to 25 May 2011, the comment was made that this was a photocopy.

16. As regards the letter from Malik Muhammad Ramzam of 15 May 2010 in which it was stated that Mr Amjad Iqbal "beats his wife and children very badly", the age of this document and the fact that it was dated seven months before the applicant claimed asylum was noted and the comment was again made that no reasonable explanation for the delay in producing it or how she came to be in possession of it had been given. The absence of the originals was also noted.
17. As regards the fatwa, which was said to be a response to a request from Amjad Iqbal, stating that the applicant should be punished in the presence of her children and people in the vicinity and stoned to death, it was noted that it was a photocopy and there was no detail provided as to who had translated it and the translation was incomplete and information appeared to be missing which was included in the original document. It was said with regard to the photocopy birth certificates for AK and GM that no reasonable explanation had been provided as to how the applicant had come to be in possession of them and why she was not able to produce them previously. As regards the copy provided of what appeared to be a passport for Amjad Iqbal it was said that she had not provided any explanation as to how she would be in possession of this, bearing in mind that her husband on her account had filed a missing persons reports for her and the children and had obtained a religious decree against her.
18. Taking all these matters together the decision maker again concluded that they did not bear out the claim that the applicant's husband was Amjad Iqbal and it was not accepted that the documents together with the previously considered

material would create a realistic prospect of success before a First-tier Judge.

19. The further submissions of 15 September 2011 included some documents that had been previously sent and otherwise included a number of photographs, but the comment was made that none of them was dated or indeed clearly stated who the people photographed in them were, why they had not been submitted previously or how the applicant had come to be in possession of them. With regard to progress reports for her sons, it was noted that the father's name was written slightly differently and no explanation had been given as to how the applicant came to be in possession of the documents.

20. The final set of submissions of 18 October 2011 contained a number of internet articles with regard to the background situation in Pakistan and a letter addressed to the police station at Sheikhpura. The letter states that Amjad Iqbal is married to Munaza Munir Baloch and they have two sons and the wife and children have disappeared since 27 December 2010. It is commented that no details are provided of the person who did the translation or any details of their qualifications, nor had any explanation been given as to why, although the letter was dated 9 January 2011, the applicant had come to be in possession of it. It was said to have been sent by Amjad Iqbal to the police but the applicant had provided, it was said, no reasonable explanation or proof regarding how it had then been sent to her, bearing in mind that she had claimed her husband did not know where she was. Background evidence concerning false documents in Pakistan and the high levels of corruption there were also referred to.

21. It was also noted that the applicant stated in relation to the documents predating her claim that they were prepared and sent

to an international NGO working for the welfare of women in Karachi who had been contacted to get help for the applicant before she fled to the United Kingdom and she said that a friend of hers had received the documents from the NGO and sent them to her and that explained the delay in their submission. It was commented that she had not provided the name of the NGO nor had she mentioned any contact with an NGO at any previous stage, and reference was made to question 67 of her asylum interview where she said there was no support for women in Pakistan in her situation. Again this evidence was regarded as taking matters no further.

22. The applicant issued the judicial review application on 7 November 2011, challenging the decision that the applicant's passport had been genuinely obtained, referring in some detail to the evidence provided and also making points in respect of internal relocation and protection. Permission to apply was refused on the papers by Geraldine Andrews QC, but subsequently after an oral hearing Judge Latta of the Upper Tribunal granted permission on the basis that arguably there had been a lack of anxious scrutiny in the respondent's consideration of the cumulative effect of the documents relied on.

The Law

23. The test to be applied in a fresh claim case such as this is whether the respondent's view that the further submissions, taken together with the previously considered material, did not create a realistic prospect of the applicant succeeding before a First-tier Judge, was irrational/Wednesbury unreasonable bearing in mind the need for anxious scrutiny.

Discussion

24. An issue that clearly concerned the judge in this case and has continued to be a relevant issue was the fact that the applicant had a Pakistani passport naming her husband as Muhammad Iqbal Rahi whereas at interview she said her husband's full name was Amjad Iqbal. At interview she said that she obtained the passport with the assistance of an agent and one day she and her children went to a place with the agent and there was another man there who was also fingerprinted. She said that these were the only passports she had ever had. Her passport has been assessed and found to be a genuine Pakistani passport, as noted by the judge at paragraph 26 of his determination.
25. On behalf of the applicant it is argued by Mr Jafar that the passport was fraudulently obtained. He refers to such documents as the applicant's children's birth certificates and the family tree data registered with NADRA as containing genuine information. The applicant has also produced photographs purporting to show her and her husband at their wedding.
26. With regard to these matters the respondent argues that the fact that the passport has been found to be genuine contradicts the applicant's assertion that it was "made" by an agent for remuneration. It is noted that she and Mohammed Iqbal Rahi applied together in person at the UK Visa Application Centre for a visa to the United Kingdom. At interview she had been asked whether she could provide any evidence to support her contention that her husband was Amjad Iqbal and she said she would try to obtain such evidence from her friend in Pakistan. This was not done at the hearing but later on in July 2011 or subsequently.

27. The respondent makes the point that many of the new documents now produced such as purported testimonies from a doctor and a head teacher predate the original asylum application but were not provided either when that application was made or when the applicant appealed to the First-tier Judge.
28. The explanation for the late production of the documents was that they were being held for her by an NGO, and there was provided a certificate dated 15 October 2011 from the Nabi Pura Community Board stating that the applicant contacted them and asked for protection from her husband and verifying that she handed over all documents to them which had been submitted subsequently to her representative through her friend. The respondent makes the point that this was not an explanation provided by the applicant earlier and the likelihood is questioned of the applicant handing over documentation to an NGO just before moving to the United Kingdom to claim asylum. Mr Jafar on the other hand argued that it was a perfectly credible thing to do bearing in mind the difficulty she could face if documents naming as her husband a different man from the man the passport said was her husband were found on her arrival. The applicant had produced to the judge a copy of a marriage certificate but he found it lacked credibility, noting that such documents could be obtained easily and it was obtained shortly before the hearing. The respondent makes the point that the applicant therefore had a history of producing forged documentation. Reference is made to the Country of Origin Information Report (COIR) for Pakistan attesting to the ease with which forgery of documents in Pakistan is done.
29. A number of photographs have been provided. The applicant argues that these bear out her contention that she is married to Amjad Iqbal, noting among other things the fact that

clearly the man she is seen next to in the wedding photographs is not the man whose photograph is to be found with the visa application documentation. The respondent on the other hand argues that there is no sensible and reliable way to be sure of the identity of the people in the photographs or whether they are indeed attending the applicant's wedding ceremony or whether the people pictured are indeed the applicant and Amjad Iqbal and whether they are bride and groom as opposed to, for example, friends.

30. Mr Halliday has argued that if the pictures at, for example, 254 and 263B are supposed to be the applicant and her husband at a wedding then they are differently dressed in the two photographs and indeed differently dressed again in the top photograph at 263B. He has also suggested that there is an element of artificiality about the photographs at 263B and suggests a possibility that one picture has been superimposed upon another.
31. Mr Jafar points to evidence concerning the Pakistan National Database Central Registration Authority (NADRA) which is described in a Wikipedia article as being an independent autonomous and constitutionally established institution of the Government of Pakistan that performs government databases and statically manages the sensitive registration database of all the national citizens of Pakistan. It is said that all the databases are kept in extreme secrecy and security to ensure the safety of the citizens' databases and that the government has shifted all its existing records of national identity cards to the central computerised database managed by NADRA.
32. Mr Jafar points to the NADRA birth certificates of the children, GM and AK naming the parents as the applicant and Amjad Iqbal. Mr Halliday has made the point than the Wikipedia

page was not before the Secretary of State when she made her decisions and the correspondence from the applicant's representatives to NADRA begins with the letter of 10 November 2011, postdating the most recent decision letter of the respondent. Mr Jafar argues that the respondent was requested to make enquiries of NADRA, in letters that were written to her before the decision letters were made. Mr Halliday responds that there is no duty on the Secretary of State to investigate. In this regard Mr Jafar relies on what was said by the Upper Tribunal in MJ [2013] UKUT 253 (IAC), referring in light of Tanveer Ahmed to the existence of particular cases where it may be appropriate for the respondent to make enquiries, for example where verification would be easy and the documentation came from an unimpeachable source.

33. I do not consider however that it is properly arguable that it is for the Secretary of State to make the applicant's case. Ultimately the applicant made her own enquiries of NADRA as it was reasonable to expect her to do, and that evidence was provided. The primary duty must be on a litigant to put forward his or her case as best she can, rather than expecting the respondent to do it for her.
34. Taking as a separate issue for the moment the question of whether or not the respondent was entitled to continue to conclude that the applicant was in fact married to Mohammed Iqbal rather than Amjad Iqbal, I consider that it was open to her to conclude as she did without irrationality or any other public law error. The points made in the various decision letters about the lack of any explanation as to why documentation was not provided earlier and as to the circumstances in which documentation was obtained in this regard are of clear relevance and force.

35. Aligned to this point is the question of the documentation which it is said was being held by an NGO for the applicant and subsequently forwarded to her. This, it is relevant to note, was not an explanation that was provided by the applicant either at the time of her application or at the time of the hearing before the judge. The respondent was entitled to be concerned at the failure to mention this before, and to note its dissonance with the applicant's claim at interview that there was no protection to be had in Pakistan, which does not sit very well with her claim in fact to have sought the support of the NGO.
36. It is relevant also to note the alternative finding of the judge that even if the story were true the applicant would not face a real risk on return. As he noted, on her evidence she was living for eighteen months away from her husband with her two children in a house which had previously belonged to her father, some twenty minutes walk away from where her husband was living and that she came to no harm whilst living there. These conclusions are borne out by the account given by the applicant at interview, and were taken into account by the respondent in coming to her conclusions.
37. It is relevant to point out, as did Mr Halliday, that, building upon what was said in the decision letters, no credible explanation has been given for the applicant's ability to produce such documents as the fatwa, provided to Amjad Iqbal, bearing in mind her claim that she fled Pakistan and was hiding from him, and the same point is made in respect of the certificate from the Silver Lining Addiction and Psychological Treatment Centre concerning Amjad Iqbal and also Amjad Iqbal's letter to the police of 9 January 2011 reporting the disappearance of his wife and children. As has been said on behalf of the Secretary of State, it is difficult to see

how the applicant could obtain possession of such documents which were written to or could be seen to be private to Amjad Iqbal.

38. Bringing all these matters together, I consider the respondent has not been shown to have failed to apply anxious scrutiny to the previous materials and the further submissions and that, as a consequence, no irrationality in her decision has been identified. In particular she was entitled to attach weight to the judge's determination, to the lack of explanation for the applicant's ability to produce documents such as the Treatment Centre certificate, the fatwa and Amjad Iqbal's letter to the police of 9 January 2011, the lack of a satisfactory explanation concerning the documents said to have been held by the NGO, the timing of the production of documents generally and the concerns about the photographs.
39. Accordingly I conclude that the respondent was entitled to conclude that the fresh material taken with the previously considered material did not create a realistic prospect of success before the putative First-tier Judge. For the sake of completeness it is relevant to note that I agree with the submissions made on behalf of the respondent concerning protection and relocation. The respondent properly attached weight to the judge's conclusions about lack of risk of harm to the applicant during the eighteen months when she was living in her father's house. These are however secondary issues bearing in mind as I have concluded above that the respondent was entitled not to accept that the further evidence showed that the applicant was married to the man she has claimed to be married to and as a consequence was not at risk from her husband.

Conclusion

40. I therefore refuse to grant judicial review of the respondent's decisions in this case.

Costs

41. It was common ground at the hearing that the outcome of the decision would determine the issue of costs. The normal rule is that costs follow the event, and accordingly I order the applicant to pay the respondent's costs, to be assessed if not agreed.