

Heard at Field House

SN & HM (Divorced women – risk on  
return) Pakistan CG [2004] UKIAT 00283

On 19 April 2004

**IMMIGRATION APPEAL TRIBUNAL**

Date Determination notified:

25 May 2004

**Before:**

**Mr J Freeman (Vice-President)  
Mrs J A J C Gleeson (Vice-President)**

**Between**

**and 3 dependants**

**APPELLANT**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**RESPONDENT**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**APPELLANT**

**and**

**and 2 dependants**

**RESPONDENT**

## **Representation**

For the appellants SN: Mr F Khan of Counsel  
Instructed by Goldkorn Mathias Gentle

For the claimant HM: Mr A Bukhari, Solicitor  
of A Z Solicitors

For the Secretary of State: Mr P Deller, Home Office Presenting  
Officer

## **DETERMINATION AND REASONS**

1. These appeals have been heard together with a view to giving some general country guidance on the position of women subject to domestic violence in Pakistan. So far as our decision deals with the general position of women in Pakistan, and the proper approach to be taken to asylum and human rights appeals in that context, it is expected that all Adjudicators and other Tribunal panels will follow the guidance set out here.
2. Both Counsel for the claimants below, SN and HM, made submissions first, by agreement, although HM's case is a Secretary of State appeal. Both claimants are citizens of Pakistan. The facts and the history of the appeal in each will be set out below, followed by submissions and consideration of relevant authorities and objective evidence. The Tribunal reserved its determinations for postal delivery.

### **Facts and history of appeal of Mrs SN**

3. SN appeals with leave against the determination of an Adjudicator (Mrs D M Thomas) dismissing her appeal against the Secretary of State's refusal to recognise her as a refugee or to grant humanitarian or discretionary protection.
4. Leave to appeal was granted under Article 3 alone. The Adjudicator's findings under the Geneva Convention on the Status of Refugees and Stateless Persons 1951 were comprehensive and sound. Permission to appeal was based solely on the acceptance that the husband had abused SN over a period of time, the abuse being condoned by his family. The family were said to be influential in Pakistan and the Tribunal considered it arguable that the Adjudicator might not have considered appropriately the dangers to which a woman in her position (a divorced spouse) would be exposed on return.

5. When granting leave, the Tribunal stated in terms: "Evidence will have to be given as to what sort of influence or political importance this family has. Also evidence will have to be given as to the actual availability of a place to go for women who have been treated in the way this claimant has."
6. No effort was made to tender any new evidence for the hearing on either of these points. The Tribunal has therefore dealt with the matter on the basis of the bundle before the Adjudicator and the single copy of the Tribunal bundle filed for us. We are however concerned that experienced immigration solicitors should fail to deal with such an obvious direction, and fail to file the required three copies of the documents upon which they seek to rely at the hearing.
7. Fortunately, SN was present at the hearing and was able to give instructions to her Counsel, which on several points was contrary to his immediately preceding submissions. Mr Khan sought to distance himself from documents filed before the Adjudicator (First Information Reports, arrest warrants, and legal correspondence), but in answer to questions from us, he accepted that those were SN's own documents upon which she had relied throughout. The Tribunal has treated all the documents before it as genuine. The facts which emerge, so far as they can be ascertained on this unsatisfactory basis, are these.
8. SN is 30 years old, from Lahore. She claimed her husband was in politics, working with Nawaz Sharif and the PML. He organised meetings and rallies. He had a membership card and she thought he might have been a member. His parents lived in Pakistan, in Islamabad. Her husband is wanted for murder; he was involved in a gun fighting incident. A case was brought against him after the shooting incident in October or November 1999, to which there were witnesses, and the police and army used to call at the house, threaten them, beat up the family, tear SN's clothes, and beat her one-year-old son. Her husband was on the run.
9. SN fled briefly to Islamabad, and then returned to Lahore, where the problems continued. She fled again to Shedhra village, and after a couple of weeks, returned to Lahore, where the problems resumed. The police were no help at all, and told her to leave her husband. They made suggestive remarks and touched her inappropriately. She stayed living in her house in Lahore. Her husband called her to join him in Islamabad, and together the family fled to the United Kingdom, arriving in September 2000 on illegal documents.

Her husband sold a lot of land and a market, which he owned.

10. The couple had been married for some time. Their daughter is now about twelve years old. The marriage has not been a happy one and SN's husband beat her regularly. His family took his side. Nevertheless, she came to the United Kingdom with her husband and they lived together in the United Kingdom from September 2000 until December 2001 when the final rupture occurred. She left him in January 2002 and met another man in February or March 2002, with whom she now lives. They are not married and this second relationship has no issue.
11. SN's marital position is confusing. The documents which she produced reveal the following chronology:

### **1999**

- On 5 January 1999, SN's husband pronounced what appears to have been a single talaq, confirmed in writing, stating, "From today on I do not have any relationship with her." The relationship resumed, and on 18 April 1999, he again confirmed in writing the pronunciation of a single talaq, stating, "From today on I do not accept her as my wife." On 19 July 1999, there is written confirmation of a triple talaq. It is not at all clear on what basis the parties were regarded as married after that date. On 17 August 1999, there is again written confirmation of triple talaq, with the statement, "From today on I do not have any relationship with her. From today on she is free of me." The parties continued to live together as man and wife.
- On 5 November 1999, a FIR was filed at Lyton Road Police Station, Lahore under sections 148, 149, and 427 C D OF Criminal Act 154 (violence and damage to property) SN's husband was accused of encouraging fire setting and damaging property as part of a riot (400/500 people) against the suspension of the PML Government. The FIR contains no mention of murder or gunshots.

### **2000**

- On 1 June 2000, SN filed a complaint at Ichhra Police Station Lahore, seeking legal action against police officers who came to her home at 7 am looking for her husband (Nadeem Shahzad), forced entry, beat her, tore her clothes, harassed her children and threatened her if she

did not produce him. She told them he had gone to Rawalpindi for personal reasons. They did not give up looking for her husband. On 21 July 2000, SN filed a second complaint at Ichhra Police Station Lahore, complaining that policemen had entered her home by force, seeking to arrest her husband; the police beat her children and took her colour television together with R40,000 in cash. She sought protection, and return of her goods and money.

- The search for her husband was unsuccessful and on 23 August 2000, local police issued an arrest warrant addressed to Nadeem Shahzad directing him to present himself to Ichhra Police Station within 15 days, for violations of Pakistan Law 148, 149, 307. The Court was satisfied that he had disappeared or was in hiding to avoid receiving the warrant. He did not surrender, and was already in the United Kingdom by this stage.
- On 22 November 2000 Newham Social Services became involved, because of police concerns about the welfare of the couple's children. The family were to be assessed by a social worker from Newham's Central Assessment Team fixed for 24 November 2000. Back in Pakistan, the authorities continued to look for SN's husband, and on 5 December 2000, a second arrest warrant was issued requiring Nadeem Shahzad to present himself within 15 days to Ichhra Police Station for violations of Pakistan Law 148, 149, 427. Again, the court was satisfied that Mr Shahzad had disappeared or was in hiding to avoid receiving the warrant.

## **2001**

- Meanwhile, concerns about the family and in particular the children, continued. On 4 September 2001, Children + Families (Social Services) referred them to the Asian Women's Association for more support, and on 13 September 2001, SN was offered support by Victim Support Redbridge, after a domestic incident involving police at Ilford. On 30 November 2001, another oral talaq was issued and confirmed in writing, stating, 'From now on I do not have any relationship with her and from today she is free.' On 5 December 2001, her husband issued a final confirmation of triple talaq, saying again, 'From now on I do not have any relationship with her and from today she is free.' On 28 December 2001, after a Social Services initial assessment (Child Protection), they pronounced

themselves satisfied that there were no further concerns, and closed the case file. There is no indication in the papers before us that SN has any contact now with her ex-husband, who is still in the United Kingdom.

## **2002**

- **5 March 2002** Certificate of no objection by Javaid Iqbal Bhatti Advocate High Ct, 053 District Ct Lahore, indicates that SN's divorce has been accepted 'throw consul'. After that, 'she is independent and no objection for marriage'. At some time between January and March 2002, SN met the man with whom she is now living. There is no suggestion that her husband has interfered with or objected to her new life, or that he has anything to do with her, having achieved his often-repeated desire to divorce her.

## **2003**

- On 19 August 2003, Javaid Iqbal Bhatti wrote confirming that SN was Nadeem Shahzad's divorced ex-wife. His parents had come to know of the divorce and had been giving threats as the divorce had been effected. The reason for their objection was not clear nor the nature of the threats. Nothing happened then for over a year.
- On 19 August 2003, a letter from Javaid Iqbal Bhatti confirmed that both SN and her ex-husband lived in London. SN was living separately. Her parents lived in Lahore, and her ex-husband's parents were making serious threats to her parents that if she returned to Pakistan they will kill her. He also confirmed that her ex-husband was wanted in 'other cases in Pakistan' (unspecified). Four days later, on 23 August 2003, Zulfiqar Ali, state Counsel for Government of Punjab Lahore, Legal Advisor, Consultant, Attorney at Law, High Court Advocate, of Zulfiqar Ali Law Associates, Lahore, in a letter addressed 'My Dear' to (presumably) SN confirmed that he had acted in 'all your suits and cases since beginning'. Her ex-husband has 'brought up excessive vengeance and dreadful plans in his heart against you. Already he has divorced you. You are advised very sincerely not to come to Pakistan. Please try to arrange some security and defence whilst living in United Kingdom also.' He does not mention that her ex-husband was still in England.

12. If SN is to establish a credible fear on return, it would not be of her husband, because he is here in the United Kingdom, but of her in-laws in Lahore. Their political influence must be limited if they have been unable to have the proceedings against their son dropped over a period of four years, and in any event, we do not accept that they would be able to exercise any influence outside the home area of Lahore.
13. The Adjudicator accepted that SN had difficulties with her ex-husband in Pakistan and that he abused and assaulted her, both there and in the United Kingdom, and that his family condoned the violence. She also accepted that they were divorced. She considered that sufficient state protection was available for the appeal and that she could return to another part of Pakistan, where she would be safer. There were support groups and shelters available to SN as a single mother if she were to return.
14. The Adjudicator also accepted that the claimant's husband was a member and supporter of the ousted PML, and subject of two arrest warrants because of his part in demonstrations for the PML. The Adjudicator recited, but did not expressly accept, the murder charge and the claimed prominence of her husband in Lahore. That appears to us to be a fair summary of the documentary evidence before us and one with which the Tribunal will not interfere.
15. The Adjudicator also considered that there was no well-founded fear in relation to her ex-husband's activities. On the human rights issue, she accepted that SN and SA, her current partner, had established private and family life in the United Kingdom since 2002 (Article 8 European Convention on Human Rights and Fundamental Freedoms 1950) and that her children by her ex-husband now had a relationship with him. The decision to return her would interfere with that right but was proportionate as she could apply to join him as a fiancée or spouse, or alternatively, there was no reason why SA could not return with her to Pakistan or join her there. The appeal was dismissed.

#### **Facts and history of appeal in HM's case**

16. The Secretary of State appeals with permission against the determination of an Adjudicator (Mr N M Paul) allowing the claimant HM's appeal against his refusal to recognise her as a refugee or to grant humanitarian protection.

17. Leave to appeal was granted on all the Secretary of State's Grounds of Appeal; that the Adjudicator's adverse comments on credibility in paragraph 9 of the determination were not linked to his finding of a risk to her in paragraph 11; that internal flight options had not been considered (*Liaquat* [2002] UKIAT 04408); that the Adjudicator failed to state his conclusion as to whether the late-produced FIR was a forgery or a genuine document; and that in consequence, the determination was unsound and inadequately reasoned.
18. HM suffered extreme domestic violence during seven years of marriage. She has two children of that marriage. She alleges that her husband has senior contacts in the police force; in any event, the police have not been prepared to help her with her difficulties. At the Adjudicator hearing, HM produced an FIR stating that an allegation of adultery had been made against her. On one occasion, in May 2003, she reported his abuse at the police station, but in general her husband believed in keeping matters within the family and SN within the house. HM then went to stay with her friend Aqeela in Karachi. Her mother's house was raided and various acquaintances questioned. The police eventually reached Aqeela's house on 18 June 2003, but fortunately by then she was staying with Aqeela's parents-in-law in Azizabad. Aqeela's husband was taken in for questioning and HM decided she had better leave Pakistan.
19. She saw a doctor only once, after her husband beat her senseless in June 2003, when he found out that she had involved the police in his family affairs by making that report. She called her mother on 6 June 2003. She has not spoken to anyone in Pakistan since then. There was no medical evidence. HM says that she is charged with adultery (*Zina*), theft of money and jewellery, and kidnapping her children when she fled with them. She argues that she has no protection anywhere in Pakistan. Unfortunately, the Adjudicator failed to make clear findings on some of the details of HM's flight, or on the credibility of her account that her husband had contacts with senior police officers and politicians, which goes to internal flight. She finally fled Pakistan via Faisalabad and came to the United Kingdom, she says on 16 July 2003, travelling on false documents.
20. The Adjudicator identified various credibility problems; the late production of the FIR, the lack of explanation as to how the claimant got hold of it if she had no contact with her mother; the illegal passport she used to enter and the lack of



explanation what happened to it or who provided it. Nevertheless, to the appropriate lower standard, he considered HM's account credible. Paragraph 11, headed 'Conclusions and Reasons', is concise:

"11. The CIPU Report spells out in detail the position of women in Pakistan at the moment. Furthermore I was provided with the Amnesty International document April 2002 dealing with Pakistan and insufficient protection of women. As was pointed out in the case of Shah and Islam the position of women in Pakistan is appalling. The CIPU Report refers to the fact that some 70% to 80% of women are the victims of domestic violence. Furthermore the position of women's rights in Pakistan is so far behind that of men's that it seems impossible for women to contemplate leading an independent life. When I combine the objective evidence with the account given by NM, I am satisfied that she has established that she has a well-founded fear of persecution. No separate consideration needs to be made of her human rights save to say that clearly if she were to be returned there would be a possible breach of her Article 2 and Article 3 rights."

21. That reasoning is inadequate, particularly as it omits any consideration of internal flight or her current relationship. We shall consider this appeal on the basis of the facts found, and submissions at the Tribunal hearing, against the objective evidence filed for these Tribunal hearings.

### **Submissions**

#### **SN**

22. For SN, Mr Khan sought to give evidence of a conversation between SN and her mother in Pakistan. There had been no new witness statement or application to call evidence. The Tribunal indicated that he should confine himself to the evidence actually filed. He had filed no new evidence to deal with the Tribunal's evidential concerns as set out in the grant of permission to appeal.
23. Mr Khan contended that SN's husband was searching for her in the United Kingdom and argued that the repeated talaqs pronounced did not amount to a valid divorce because SN's husband had returned to her on all occasions but the last. That would suggest that the validity of divorce proceedings under Pakistani law depends upon the subsequent actions of the parties. The argument is not supported by the documents the appellant submitted as genuine, and upon which she relies. The documents make it plain that this couple are divorced, and she is free to remarry.

24. Mr Khan relied upon the April 2003 CIPU Country Report for Pakistan, paragraphs 6.151-7, 6.163-8. Her husband and his family were prominent in the PML and if she were attacked, nothing would be done about it. In the US State Department Report, he relied upon the passage about honour killings at p.178 of SN's bundle; the couple came to the United Kingdom together to flee political problems. SN's new partner, SA, was also from Lahore. Her husband was still in the United Kingdom, as far as she knew.
25. He argued that the decision in *Liaquat* could be distinguished as there was there no question of adultery. The Adjudicator had considered and applied his mind to the core account (persecution, husband wanted and a FIR issued, risk on return) but failed to make any finding on her detailed case. The appeal must be remitted as the factual findings were totally inadequate.
26. For the Respondent, the Secretary of State, Mr Deller argued that the evidence of impunity was not persuasive to any standard, given the family's inability to deal with the FIR and arrest warrants against SN's ex-husband. The talaq pronouncements did not mention adultery and there was no evidence that SN had committed adultery. Her new relationship had been entered into after the end of the previous relationship.
27. The documents showed that SN's marriage came to an end in March 2002 after repeated talaqs and acceptance 'throw consul'. The couple were divorced. Particularly in the light of her husband's evident wish to end the marriage, as evidence by the repeated talaq documents, the suggestion of any malevolent pursuit by him of SN after the end of the marriage was simply too speculative.
28. For SN, Mr Khan sought to give evidence of a conversation between SN and her mother in Pakistan. There had been no new witness statement or application to call evidence. The Tribunal indicated that he should confine himself to the evidence actually filed. He had filed no new evidence to deal with the Tribunal's evidential concerns as set out in the grant of permission to appeal.
29. Mr Khan contended that SN's husband was searching for her in the United Kingdom and that the divorce was not valid, even in Pakistani law. That is plainly wrong, for the reasons set out above. There is no ambiguity in the appellant's own

evidence in the documents she submitted as genuine. The couple are divorced, and she is free to remarry.

### **HM**

30. In relation to HM's appeal, Mr Deller for the Secretary of State (the appellant in the HM case) contended that the Adjudicator appeared not to have considered substantial elements of the claimant's evidence and that his findings of fact were in consequence unsustainable. The appeal must be remitted for hearing afresh.
31. For the claimant, Mr Bokhari argued that the Adjudicator had found the claimant credible and that all other points in her detailed and consistent account were accepted. The claimant had been pursued in three, or possibly four, different cities, by the police and her husband. The Adjudicator looked at the facts and accepted them. Azizabad was close to Karachi, in Sindh province, but Faisalabad was in the Punjab, one and a half to two hours from Lahore. Nevertheless, the Adjudicator had accepted that the claimant's husband found her there.
32. On the particular facts of HM, the Tribunal agreed with Mr Deller's assessment of the determination and the proper course of action. The appeal will be allowed and remitted.

### **Relevant authorities and background information**

33. The leading decision on the position of women in Pakistan is *Shah and Islam* [1999] Imm AR 283 HL, which predates the coming into force of the Human Rights Act 1999. In his judgment, Lord Steyn summarised the position of women in Pakistan in 1999 as follows –

“Generalisations about the position of women in particular countries are out of place in regard to issues of refugee status. Everything depends on the evidence and findings of fact in the particular case. On the findings of fact and unchallenged evidence in the present case, the position of women in Pakistan is as follows. Notwithstanding a constitutional guarantee against discrimination on the grounds of sex a woman's place in society in Pakistan is low. Domestic abuse of women and violence towards women is prevalent in Pakistan. That is also true of many other countries and by itself it does not give rise to a claim to refugee status. The distinctive feature of this case is that in Pakistan women are unprotected by the state: discrimination against women in Pakistan is partly tolerated by the state and partly sanctioned by the state. Married women are subordinate to the will of their

husbands. There is strong discrimination against married women, who have been forced to leave the matrimonial home or have simply decided to leave. Husbands and others frequently bring charges of adultery against such wives. Faced with such a charge the woman is in a perilous position."

- 34.** Lord Hoffman considered that there could be no suggestion that a woman was entitled to refugee status merely because she lived in a society which, for religious or any other reason, discriminated against women -

" Although such discrimination is contrary not merely to western notions but to the constitution of Pakistan and a number of international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women, which Pakistan ratified in 1996, it does not in itself found a claim under the Convention. The Convention is about persecution, a well founded fear of serious harm, which is a very different matter. The discrimination against women in Pakistan found by the special adjudicator to exist there is relevant to show that the fear of persecution is on a Convention ground but is not in itself enough. Furthermore, the findings of fact as to discrimination have not been challenged. They cannot be ignored merely on the ground that this would imply criticism of the legal or social arrangements in another country. The whole purpose of the Convention is to give protection to certain classes of people who have fled from countries in which their human rights have not been respected. It does not by any means follow that there is similar persecution in other Islamic countries or even that it exists everywhere in Pakistan. Each case must depend upon the evidence."

- 35.** Lord Hope of Craighead considered that women fell to be treated as a particular social group within the meaning of Article 1A of the Refugee Convention in Pakistan because "they are women and because women are discriminated against in that country" and that there was no need to define the group more closely. Lord Millett, dissenting, considered that -

"Where the authorities perceive a particular social group to be hostile, they may persecute its members by openly withdrawing their protection and leaving them to the mercy of criminal elements. The fact that those who take advantage of the situation to use violence against members of the group do so for their own private purposes does not matter; the members should be regarded as the victims of official persecution by the state. To qualify for refugee status, however, they must still prove that the state authorities have withdrawn their protection for a Convention reason.

Such questions will depend on the evidence. The evidence in the present case is that the widespread discrimination against women

in Pakistan is based on religious law, and the persecution of those who refuse to conform to social and religious norms, while in no sense required by religious law, is sanctioned or at least tolerated by the authorities. But these norms are not a pretext for persecution nor have they been recently imposed. They are deeply embedded in the society in which the appellants have been brought up and in which they live. Women who are perceived to have transgressed them are treated badly, particularly by their husbands, and the authorities do little to protect them. But this is not because they are women. They are persecuted as individuals for what each of them has done or is thought to have done. They are not jointly condemned as females or persecuted for what they are. The appellants need to establish that the reason that they are left unprotected by the authorities and are liable to be persecuted by their husbands is that they are women. In my opinion they have not done so."

36. The group here posited is 'women victims of domestic violence in Pakistan'. That is a shorthand description and perhaps should more properly be treated as women who may on return become victims of domestic violence in Pakistan. We considered whether the evidence set out in the current CIPU Country Report and US State Department Reports is the same as that in 1999, or can be treated as substantially the same for the purpose of determining risk on return. We have been referred to paragraphs 6.151-6.168 of the CIPU Country Report for October 2003. The law of Qisas (retribution) and Diyat (compensation) is set out in a 1990 Ordinance, but cannot be invoked where the victim is a direct lineal descendant of the perpetrator. Domestic violence under this Ordinance is a question of the victim or heir's right to retribution or compensation, and only if these are waived can discretionary punishment (Tazir) be applied (6.151). Police in practice are reluctant to interfere. In October 2000, the Interior Minister said that all discriminatory laws against women should be repealed or amended to remove discrimination against women, and in November 2000, Chief Justice Saeed ul Zaman Siddiqui told a convention of women lawyers in Islamabad that the Pakistan Law Commission was currently engaged in urgent reform of this area (6.152).
37. A Special Committee of the National Commission on the Status of Women has been reviewing the controversial Hudood Ordinance since May 2002 (6.153). Women fare better in urban areas and the middle and upper class sections of society (6.156), and can assume greater control of their lives. Women's rights continue to be insufficiently

protected (6.158). In 2001, as many as 204 women were killed in Sindh as honour killings or for adultery (Karo/Kari) and the Government failed to take action, particularly where influential families were involved (6.163). Nationally, more than 800 women were killed by family members in honour killings.

38. The latest US State Department Report (for the year 2003, released in March 2004) confirmed that discrimination against women was particularly harsh in some areas of rural Sindh and Baluchistan. The Government had criticised violence against women and opened crisis centres for women, which provided counselling, legal and medical referrals and a hotline for women in distress. Women's organisations operated primarily in urban centres and many concentrated on educating women about existing legal rights. Other groups concentrated on providing legal aid to poor women in prison who might not be able to afford an attorney.
39. The Amnesty International report for 2003 states that -

“Women and girls continued to be subjected to abuses in the home, the community and in the custody of the state. Impunity for such abuses persisted. Hundreds of women were killed in so-called “honour” killings. Some private initiatives were announced. For instance the head of the Leghari tribe said in March that “honour” crimes would no longer be permitted. However, the state did not take any action to ban the practice or to ensure that the perpetrators were held to account. The law of Qisas and Diyat relating to murder remained unchanged. This law allows criminal prosecution only if the family of the murder victim wishes to pursue it. In case of “honour” crimes this often does not occur, leading to persistent impunity. Police failed to respond adequately to abuses reported by women.”
40. In relation to internal flight, the Secretary of State's CIPU Country Report accepts that the internal flight option may be limited for women and mixed religion or mixed-caste couples. Flight from rural areas to the cities was frequently exercised where economic circumstances permitted, but even there the woman or couple might not be safe from families or religious extremists (6.122).

#### **Application to these appeals**

41. Leave to appeal was granted in SN's case because the Tribunal considered that the Adjudicator arguably had not considered adequately the risks to a person in her position on return. Questions might have arisen under the matrimonial

law of Pakistan as to the validity of a talaq which had not yet been registered with the Nikah Union Council; but SN has chosen to present herself, through her lawyers' letters, as legally divorced, and free to remarry.

42. On SN's case as she presented it, she is not an adulteress; the new relationship began once she was free. She has not explained why she should not simply marry her partner and return to another part of Pakistan, since she has been free to do so since March 2002. SN's husband had been actively trying to free himself from her for years and there is no evidence of any recent attempts by him, nor credible evidence of such attempts by his family, to contact SN. We therefore find that her former husband and his family have no continuing interest in her and in particular that her ex-husband been trying to divorce her since 1999 at least.
43. As regards the risk from SN's former husband's family, the evidence before us is very scanty. A rather convenient letter from a lawyer indicates an adverse reaction to delayed news of the divorce, but there is no satisfactory evidence that outside the home area, his family are sufficiently influential to cause her any difficulty. Indeed, her ex-husband is wanted for criminal offences and they have been unable to quell the pursuit of those offences. The family is plainly not as influential as SN believes.
44. We consider that any risk to SN does not meet either the Refugee Convention or ECHR Article 3 standard even in the home area and that internal flight does not arise. SN has a partner whom she could marry before returning to Pakistan. Despite a direction to do so, she did not produce evidence relating to the availability of shelters in Pakistan for the Tribunal hearing. We do not accept that SN is still of interest to her ex-husband's family, and we consider that she could now return as a divorcee and resume her life in Pakistan outside her home area, with or without her partner here, whom she told us would be free to marry her. They do plan to marry in due course. Thus, on the particular facts of SN's case, and despite the general difficulties for women in Pakistan, she has not discharged the burden upon her of showing a real risk or reasonable degree of likelihood from her husband's family should she return to Pakistan and not live in her home area.
45. In HM's case, the appeal is that of the Secretary of State. The Tribunal has already indicated that we find the Adjudicator's determination inadequately reasoned. Given the lack of any consideration of internal flight, or findings of fact in relation to

the strength of her husband's political and police connections in Pakistan as a whole, there is in our view no alternative but to remit this appeal for fresh consideration by a different Adjudicator.

### **General conclusions**

46. As was stated as long ago as 1999 in *Shah and Islam* [1999] Imm AR 283, the position of women in Pakistan is unsatisfactory, with widespread discrimination and insufficient State protection. There has been some progress in the last five years, and particularly in urban centres, crisis support may now be available. The then President of the Tribunal, Mr Justice Collins, held in *AE and FE* that –

“The concept of IR [internal relocation] is based on the recognition that surrogate protection is only required if there is no part of the country of nationality which can be regarded as safe in that no well-founded fear of persecution exists there and to which it would not be unreasonable to expect the claimant to relocate.”

47. Government criticism of the abuse of women has had only a limited effect, but absent any evidence filed on behalf of these claimants, we considered the account of available assistance for women at risk from family problems, as set out in the CIPU Country Report for Pakistan, April 2004 -

**“6.210** According to Amnesty International in a 2002 report, shelters for women at risk continue to be inadequate in number and the kind of support they offer. According to their website (accessed in 2002), the organisation Lawyers for Human Rights and Legal Aid in conjunction with UNICEF has set up Madadgaar which can be contacted by a hotline and provides legal aid and advice and has links with shelters for women.

**6.211** According to the US Department of State report 2001, a crisis centre for women in distress was opened in Rawalpindi by the Progressive Women's Association. After several years of lobbying the Government, in 1997 the Government opened a centre in Islamabad with the assistance of the PWA and other local NGO's. The centre offers legal and medical referrals from volunteer doctors and lawyers, counseling from trained psychologists and a hotline for women in distress. The USSD Report 2003 notes that The Government has criticized the violence against women and has opened some crisis centers for women. In 2002, the Crisis Center for Women in Distress helped 89 women through legal and medical referrals, counseling from trained psychologists, and a hotline for women in distress As noted by Amnesty in a 2002 report, six Women Crisis Centres were set up by the Government in late 1999 in different parts of the country in Islamabad, Vehari, Lahore, Sahiwal,



Karachi and Peshawar. Within six months of their opening 780 women had approached them seeking legal aid, looking for shelter and medical help.

**6.212** According to Amnesty in their 2002 report, the state-run shelters (Darul Amans), some of which are severely overcrowded, have been described by women's groups as constituting virtual prisons where women are deprived of freedom of movement. Staff at these frequently advise women to accept reconciliation and return. According to the Daily Dawn newspaper dated 29 September 2002, a speaker at a seminar on "Legal and Shelter Facilities for Destitute Children and Women" in September 2001 said that in Karachi, a city of over 10 million people, there were only two shelters for destitute children and women, a Darul Aman and one run by the Edhi Foundation (a national and international NGO) (as stated on the Edhi foundation website). In the country as a whole it was stated that there are 13 Darul Amans, three Edhi Centres and certain other privately-managed shelter houses not thought to be sufficient in number.

**6.213** According to the US Department of State report 2003 Women's organizations operate primarily in urban centers. Many concentrate on educating women about existing legal rights. Other groups concentrate on providing legal aid to poor women in prison who may not be able to afford an attorney.

**6.214** With regard to victims of trafficking the US Department of State report 2003 cites that, "The Government sponsored shelters and training programs for actual and potential trafficking victims. There were 276 detention centers where women were sheltered and given access to medical treatment, limited legal representation, and some vocational training. The Government provided temporary residence status to foreign trafficking victims; however, police often treated victims of trafficking as criminals. The Government does not provide specialized training to assist trafficking victims. Very few NGOs deal specifically with trafficking; however, many local and provincial NGOs provide shelter to victims of trafficking and women and children at risk of trafficking."

- 48.** The same CIPU Country Report accepts that internal flight options are limited for women, but it does not state that there are no internal flight possibilities and each case will depend on its own particular factual matrix. We find that some support is available in the cities, and we also consider the geographical scale of Pakistan (covering an area of about 307,374 square miles, with a population of 140,470,000); the question of internal flight will require careful consideration in each case. The general questions which Adjudicators should ask themselves in cases of this kind are as follows –

- (a) Has the claimant shown a real risk or reasonable likelihood of continuing hostility from her husband (or former husband) or his family members, such as to raise a real risk of serious harm in her former home area?
  - (b) If yes, has she shown that she would have no effective protection in her home area against such a risk, including protection available from the Pakistani state, from her own family members, or from a current partner or his family?
  - (c) If yes, would such a risk and lack of protection extend to any other part of Pakistan to which she could reasonably be expected to go (*Robinson* [1997] EWCA Civ 2089, *AE and FE* [2002] UKIAT 036361), having regard to the available state support, shelters, crisis centres, and family members or friends in other parts of Pakistan?
49. The appeal should be allowed under the Refugee Convention or Article 3 ECHR only if, on the facts as at the Adjudicator or Tribunal hearing, having regard to the background evidence and jurisprudence, a positive answer can be given to each of these questions.

#### **Summary of Decisions**

- 50. In the case of SN, the appellant's appeal is dismissed.**
- 51. In the case of HM, the Secretary of State's appeal is allowed. We direct that this appeal be remitted for hearing afresh by any Adjudicator other than Mr N M Paul.**



**Dated: 14 May 2004**

**J A J C Gleeson  
Vice-President**