FS (domestic violence –SN and HM – OGN) Pakistan CG [2006] UKAIT 00023

Asylum and Immigration Tribunal

THE IMMIGRATION ACTS

Heard at Hatton Cross	Determination Promulgated
On 30 November 2005	On 13 March 2006

Before

Mrs J A J C Gleeson
(Senior Immigration Judge)
Ms A Dhanji
(Immigration Judge)

Between

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:	Mr D Chirico of Counsel Instructed by Rahman & Co, solicitors
For the Respondent:	Mr K Norton Home Office Presenting Officer

(1) Operational Guidance Notes (OGNs) provided by the Secretary of State for the Home Department for the guidance of his caseworkers are a statement of the position taken by him at the date they were issued but must be considered in the context of subsequent evidence about the situation in the country of origin, including the information summarised in subsequent COI Reports; and

(2) The background evidence on the position of women at risk of domestic violence in Pakistan and the availability to them of State protection remains as set out in SN & HM (Divorced women– risk on return) Pakistan CG [2004] UKIAT 00283. It appears that the current intention of the authorities is to improve State protection for such women, although progress is

slow. Every case will still turn on its particular facts and should be analysed according to the step by step approach set out at paragraph 48 of SN & HM, with particular regard to the support on which the appellant can call if she is returned.

DETERMINATION AND REASONS

1. The Tribunal has decided that there was a material error of law entitling the Secretary of State to reconsideration of the decision of an Immigration Judge (Mr Kulatilake) allowing her appeal. The decision to proceed to full reconsideration was taken by a panel of two Senior Immigration Judges at a hearing which dealt specifically with the error of law stage and the reasons for that decision were recorded by the panel. We adopt and insert the reasons in this determination unaltered, save that, for ease of reference, we refer to Mr Campbell as 'the first Immigration Judge' and Mr Kulatilake as 'the second Immigration Judge' throughout -

> "The appellant is a citizen of Pakistan. She arrived in the United Kingdom on 18 May 2003, with her children, and claimed asylum on 22 May 2003. Her application was refused on 2 July 2003 on both refugee and human rights grounds in a notice of intention to give directions for removal from the United Kingdom, for the reasons set out in a letter dated 30 June 2003. Her appeal against that decision was dismissed by [the first Immigration Judge], in a determination issued on 29 September 2003.
>
> The appellant was granted permission to appeal to the Immigration Appeal Tribunal (IAT) and in a determination issued on 25 January 2005, the IAT allowed the appellant's appeal in the following terms:
>
> > "9. Accordingly this appeal is allowed to the limited extent that the Immigration Judge's determination is set aside and the appeal remitted for hearing afresh by any Adjudicator other than [the first Immigration Judge]."
>
> The appeal came before [the second Immigration Judge], on 14 March 2005. He decided that the IAT had remitted the matter to him to decide only a limited issue. That issue was as to 'the reasonableness of the appellant's relocation/internal flight outside her home area.' (Paragraph 2). He noted that the Presenting Officer agreed with him, whilst Counsel for the appellant disagreed, submitting that it was a hearing of all the issues. He allowed all aspects of the appeal in a determination issued on 1 April 2005.
>
> Despite the submission to the second Immigration Judge by the Presenting Officer that the IAT had limited the ambit of the hearing, the respondent appealed on the ground that the IAT had remitted the matter to be heard completely afresh and had not limited the ambit of the appeal. There were also challenges to the assessment of credibility and the findings of fact. It was submitted that he reached conclusions that were speculative, not based on the evidence, and perverse. An order for reconsideration was made on 21 April 2005, in respect of all the Grounds of Appeal. It is in this way that the matter comes before us now.

Mr Johnson, Presenting Officer, relied on the grounds of appeal and did not consider that he needed to add anything further, save that he had been unable to trace any minute that showed that the Presenting Officer had agreed that the scope of the appeal was limited in the way set out in the determination. We pointed out to Mr Johnson that there was no challenge on that point in the grounds of appeal.

Mr Lemer, Counsel for the appellant, submitted that there had been no material error of law by [the second Immigration Judge]. In relation to the assessment of the evidence and the findings of fact, [the second Immigration Judge] had relied upon the findings of [the first Immigration Judge], including at paragraph 56 of the first determination, and had based his findings in the evidence, including the background evidence, for example the CIPU October 2004 and the expert report of Wenonah Lyon. Mr Lemer took us to various extracts from the first determination and the background evidence.

Mr Lemer referred us to the case of *AB (Algeria – scope of remittals) Algeria* [2004] UKIAT 00323. He accepted that [the second Immigration Judge] had erred in law in that he had incorrectly interpreted the decision of the IAT. He accepted that it was clear that there was to be a full fresh hearing. He submitted that this error was not material, and that paragraphs 24 and 25 of the decision of the President in *AB* were authority for the proposition that in the circumstances of the case that was before us, given that the IAT had not identified any error of law in the findings of fact of the first [Immigration Judge], then there could be no error on the part of the second [Immigration Judge] in simply following the findings of the IAT in that regard.

For completeness, we set out paragraphs 23-24 of *AB:*

> "23. Fifth, it does not follow at all from that, that upon a remittal the Tribunal should not express what issue has caused the remittal and what the [Immigration Judge] needs to focus on. Quite the contrary. There may be no fresh evidence or argument on other issues. Even where there is, it should assist the conclusions of the Immigration Judge to avoid error or at least its repetition.
>
> 24. Sixth, when an [Immigration Judge] is dealing with a remittal on such a basis, it is an error of law for him to ignore what the Tribunal has said about the issues which have not occasioned the remittal and upon which it has expressed its clear conclusion. He is expected to follow those conclusions, rather than to reopen them, unless there are good reasons for doing so. The mere fact that more evidence has been heard is not by itself sufficient; it is necessary to explain why that new evidence justifies differing from the Tribunal's conclusion on those issues. It will also be necessary to look with considerable care, even scepticism, at evidence which could and should have been before the first [Immigration Judge] or before the Tribunal."

Taking first the issue of the scope of the remittal by the IAT. We find that Mr Lemer is correct to accept that there was an error of law on the part of [the second Immigration Judge] in limiting the scope of the appeal that was before him. We are not with him, however, in his submission that it was not a material error of

law. That is because it is absolutely clear from the words used by the IAT when allowing the appeal, at paragraph 9 of their determination, that not only are they deciding that there must be a completely fresh hearing before another [Immigration Judge], but in so doing, they also, in terms, set aside the determination of [the first Immigration Judge]. We find that it is not arguable that it was open to [the second Immigration Judge], through reliance on paragraphs 23 and 24 of AB, to himself rely upon the findings of the first [Immigration Judge]. We do not agree that there is support for Mr Lemer's contention to be found there. In their determination in the appeal that is before us, the IAT did not more than to highlight agreed areas of concern, and therefore areas of focus, as was mentioned in AB, but in no way can it be said that the IAT limited the issues that were to be considered by the second [Immigration Judge].

Whilst it was certainly the case that the IAT agreed with the parties that they had identified the issue of internal relocation as being key, and agreed with the parties that [the second] Immigration Judge had failed to give any, or any adequate, reasons to support certain findings of fact (paragraph 8 of their determination), it is simply not arguable that the IAT made any finding themselves or accepted that any findings of either of the Immigration Judges should stand. The IAT noted that it was not in a position to make good the deficits. Having set aside [the first Immigration Judge's] determination, in terms, and having not specified that any aspect of the determination was to stand, for our part we cannot see how it can be argued that any part of it can subsequently be relied upon. We are satisfied that, had the IAT considered it safe to remit the appeal upon a limited basis of any kind, then it would have done so, and would have set out in the clearest possible terms what the precise ambit of the further hearing was to be.

Given that Mr Lemer based his argument in relation to the other aspects of the appeal, at least in part, upon the submissions that [the second Immigration Judge] had been entitled to rely upon the findings of [the first Immigration Judge], we find that his argument cannot safely be regarded as sustainable, and we are satisfied that [the second Immigration Judge] further fell into material error of law insofar as the grounds at paragraphs 1, 2 and 3 are concerned.

Had [the second] Immigration Judge not so erred, then he may have reached a different decision. We are not in a position today to conduct a full rehearing of this appeal. We have no alternative but to direct that the matter be re-listed for a full, fresh reconsideration hearing when all matters will be at large for the AIT to consider and decide completely afresh, without reliance in any way upon the determinations of either Mr Campbell or Mr Kulatilake.

It is directed that this matter be transferred to Hatton Cross Hearing Centre."

2. We therefore reconsidered the determination of the second Immigration Judge completely afresh, hearing oral evidence from the appellant and not seeking to rely on findings of fact made by either the first or second Immigration Judge. No reliance was placed by either representative on the earlier accounts recorded by the first and second Immigration Judges in their determinations. The Tribunal explained the procedure to the appellant at the beginning of the hearing and ensured that she was able to understand the interpreter. We reminded ourselves that the burden of proof is upon the appellant to the lower standard

appropriate for refugee and human rights matters (real risk or reasonable degree of likelihood).

3. The appellant's account is a common one, unfortunately; her marriage was not a success and involved domestic violence, which she says is why she fled to the United Kingdom. The Secretary of State accepts that the appellant suffered domestic violence during her marriage, as the objective evidence shows that one in two women in Pakistan do. Some of the difficulties in the marriage were caused by the gambling habits of the appellant's husband, who although a wealthy man and a generous provider was an habitual gambler. He was also suspicious of the appellant's fidelity and never accepted any of their three children as his own. He thought she was having an affair with one of his relatives, and the worst incident of violence in the marriage occurred just before the birth of their third child. He resented the appellant not having brought him a big dowry. Towards the end of the marriage, the husband had an affair with a childminder brought in to care for the three children.

4. The appellant was born in 1969 and is a woman of reasonable education: she is a Sunni Muslim who speaks both Urdu and Punjabi, and who was able to complete her SSC School Examination with the help of private tuition, after leaving school at 14. She passed the exam when she was 16 years old and her parents, who were middle class but not rich, then arranged her marriage. Her husband, whom the appellant met on her wedding day, had been married before and, unusually, permitted his first wife to be the divorcing party. During the marriage, a relative of the husband told the appellant that the husband was also physically abusive to his first wife because she was unable to bear children for him. The first wife obtained a court divorce. After the divorce, there is no evidence that he has troubled her again.

5. The appellant's parents were delighted with the match. They did not investigate the details of the divorce before the wedding; the appellant's husband was a 'catch' for the family; two older sisters had married badly and all three of the appellant's other sisters are in marriages where they live in just one room with their husbands, children, and in-laws.

6. The appellant's new husband was good to her financially, despite his gambling habit. He gave her sufficient housekeeping money to enable her to save the enormous sum of 4 Lakh rupees (about £4000) in cash, or in cash and jewellery (there is some variance in her accounts on this point). He also bought her jewellery himself. However, he was jealous; he suspected her of having a relationship with a relative of his, and he never believed her denials. He never trusted her and used abusive language to her all the time. Sometimes he beat her; he resented her not bringing a big dowry, although he was well off himself.

7. The appellant complained to her parents, who told her that she must stay with her husband; for her to leave would bring shame on the family. The appellant then found out about the first marriage, and told her parents about the first wife; she was frightened now. They disbelieved her and said that the husband's relative was mischievous, seeking to upset the second marriage. Two sons came along. The husband's behaviour worsened. He threatened 'to divorce me and kill my children'.

8. On 2 January 2001, matters came to a head. The appellant was 8 months pregnant and during a bout of jealousy, her husband hit her with an iron bar. He took her to hospital and told her to say she fell downstairs, as if she told the truth 'he would kill me'. He took the appellant home to her parents and told them that she had fallen downstairs.

9. Overnight, the pain and swelling increased in the broken arm and the appellant found it unbearable. Her parents took her to another hospital, where x-rays revealed the broken arm. At the hearing before this panel, the appellant says that the arm was bleeding profusely. This was the first mention of profuse bleeding; we treat it as an embellishment of her account. The appellant's parents borrowed money and were able to pay for some treatment for the arm, but the arm remains painful and will not bend, perhaps because they could not afford to pay very much.

10. The appellant now told her parents the truth; they saw the scars on her body and arm, and this time, they believed her. Accompanied by her parents and many of her neighbours, the appellant went to the police on 3 January 2001, and filed a First Information Report against her husband. It was registered, but not pursued, due to her husband's 'close contacts with local MNA [Member of National Assembly] and higher police officers'. She believes the police took a bribe. We note, that although the appellant told the police the truth, her husband did not carry out his threat to kill her; instead, apologetically, he negotiated a resumption of the marriage, with the help of her parents, and promised not to beat her again.

11. The child was born on 2 April 2001. The appellant went home. Her evidence today is that her husband never asked her to withdraw the First Information Report; he had 'sorted it out' himself. After a few days, the relationship deteriorated again. The appellant's father was so distressed that he had a heart attack, and died on 18 December 2001. Her husband's behaviour worsened. On 15 March 2002, the appellant's mother died, also of a heart attack induced by her worry about her daughter. The appellant's husband continued to beat her. He did not treat her children as his; he continued to suspect her of infidelity. With her injured arm, she could not care for the new baby, a daughter, so a child minder, a woman from the village, came to live with the family and look after it.

12. After a year, in March 2003, it became apparent to the appellant that this woman was also attending to the husband's sexual needs. She questioned him and he became angry. He beat her and said that if she told anyone about the child minder, he would 'kill me and divorce me'. That is an intemperate expression; if the husband had killed his wife, there would be no need for him also to divorce her.

13. The appellant telephoned a friend from school, A, whom she had continued to see at her mother's house from time to time, but who was not known to her husband. A advised her to leave. When the husband went to Sialkot on business, the appellant took her chance, and left home with her jewellery and cash (her husband had left cash in the house that day); she went straight to A's house which was also in Lahore. A's brother arranged an agent for the appellant to come to the United Kingdom. The appellant did not pay the agent for her journey and travelled on a false passport. She had never had a genuine passport. She claims not to have known how to claim asylum until she got here, but she did see solicitors promptly and claimed asylum after four days.

14. She had not divorced her husband whilst in the United Kingdom; her oral evidence was that, after three months, he would have the right to divorce her under religious law, and therefore, if she remained married, it would be in name only. The appellant did not seek to discover whether her husband had divorced her since she came to the United Kingdom.

15. The appellant lived with friends of A's here in the United Kingdom. About a year after she arrived, she became pregnant by another friend of A's who visited the house where

she was living. She never knew his family name, and was unsure of his first name as he used two. The appellant had not seen him since she learned of the pregnancy, had not named him on the birth certificate (which we have not seen) and when she telephoned him to say she was pregnant, he was not interested. She does not want her younger daughter to have anything to do with such a scoundrel. The fourth child was born in January 2005.

16. The appellant kept in contact with A (who obtained the death certificates, medical letter and copy First Information Report for her), and received news of her sisters through A, but they none of them had telephones so that access was limited. The appellant had no news at all of her husband since she spoke to A in 2003 to get the documents organised. At that time he was said to be looking for her. She was not aware of his filing any First Information Report about her theft of the money and jewellery.

17. When asked why she could not return and seek internal relocation outside Lahore, the appellant said that she did not know where she would live, that she would have financial problems and would be worried about the children's education. (Presumably, when she came to the United Kingdom, she would have had the same concerns.) Then, as an afterthought, the appellant said she was afraid of her husband tracing and killing her. There was no news of any pursuit; for all she knew, her husband might have divorced her and married again. The appellant maintained her assertion that her husband would try to kill her on return.

Submissions

18. For the respondent, who was the applicant for reconsideration, Mr Norton argued as follows. He relied upon the letter of refusal and accepted both that domestic violence was a problem in Pakistan, and that this appellant may in the past have suffered it. He argued that certain aspects of the appellant's oral evidence (for example, the level of examination of the injury to her upper arm) were unreliable and mutually contradictory. Having regard to his acceptance that the appellant may have suffered domestic violence in the past, that element of his argument is not material to the decision the Tribunal has to make.

19. Mr Norton also argued that the appellant's evidence could not be treated as entirely credible, following s.8 Asylum and Immigration (Treatment of Claimants etc.) Act 2004. She had been content to travel on someone else's passport which she knew was not her own, and thus had entered the United Kingdom illegally. She had also failed to claim asylum for four days after her arrival.

20. Mr Norton contended that on *Tanveer Ahmed* principles, the Tribunal should be slow to accept as a reliable document the First Information Report which the appellant had obtained. It was not at all clear how her friend A had managed to obtain from the Police Station a document which did not concern A but only the appellant and her family; if the answer was, by bribery, then even if the document was on a genuine form and signed by a real police officer, that raised the question whether it was a true record of a First Information as it appeared to be.

21. The husband was a powerful man, on the appellant's account, and had been aware of the First Information Report almost immediately. She said he had arranged for the First Information Report not to be proceeded with; if that were the case, it was indeed strange that, rather than it being removed from the police files, it was still available to copy and send to England some two and a half years later. Further, given that it was a stain on his

character, it was difficult to see why this allegedly violent man had not put any pressure on the appellant to withdraw her complaint, especially after the death of both her parents removed her family support.

22. The political influence obtained from the husband's connection with a Member of the National Association appeared, on the evidence, to amount only to the giving of contributions, and attending meetings. The husband was a generous constituent, but Mr Norton argued that the Tribunal should not find his influence greater than that. The appellant's worries about living outside Lahore were revealing: accommodation, financial difficulty and education for the children came first in her thinking, only later followed by a claimed fear of her husband tracing and killing her. She would have difficulty in caring for these children, economically, but there was a network of shelters and at least one Non-Governmental Organisation providing legal assistance to women in her circumstances. The appellant could divorce her husband and begin to rebuild her life: she had friends and relatives here and in Pakistan who could support her in that.

23. Mr Norton asked the Tribunal to treat Dr Wenonah Lyon's expert report with caution; it was plainly well-intentioned but was not sourced to contemporaneous primary materials or much in the way of supporting evidence. The effect of the Operational Guidance Note was not to say that nobody with limited education and young children could be returned; there were millions of women surviving in Pakistan in similar conditions. The United Kingdom's obligations in humanitarian protection did not extend to protect those living under the benefit threshold in foreign countries.

24. Mr Norton asked the Tribunal to dismiss the Refugee Convention and Article 3 claims. There was, as he understood it, no live Article 8 claim. We were therefore not required to consider *MG (assessing interference with private life) Serbia and Montenegro* [2005] UKAIT 2005, although it was among the documents filed by the Secretary of State.

25. For the appellant, Mr Chirico confirmed that the Tribunal was only required to deal with the Refugee Convention and article 3. There was no article 8 claim before us. He relied upon his skeleton argument and in addition, made oral submissions. We begin with the appellant's skeleton argument. The first three pages summarise the evidence already referred to above. The appellant then set out the background evidence on Pakistan in relation to domestic violence and impunity, and the bribery and corruption in the police and judiciary. None of these matters were in dispute, either in *SN and HM* or this appeal. Similarly, the shortage of shelters for women at risk of domestic violence, and the legal discrimination against women were not disputed. There were, however, some shelters.

26. The skeleton argument reminded the Tribunal of the evidence of Dr Wenonah Lyon that domestic violence remained prevalent, was increasing rather than decreasing, and that there were limits to the practical effectiveness of women's shelters. The next pages (up to page 9) summarise well established concepts in this jurisdiction. At paragraph 9, the appellant makes submissions in relation to the Respondent's letter of refusal. She argues that her account is internally consistent and wholly credible (despite her having arrived on false documents and failed to claim asylum on arrival: section 8 Asylum and Immigration (Treatment of Claimants etc.) Act 2004). The Tribunal cannot find her wholly credible on that basis, but we do accept that the core of this appellant's account is credible against the background evidence.

27. The appellant argued that she could not seek the protection of a women's refuge; many were short-term, and there remained a risk of attack even in a refuge. It was not a long-term solution, and, crucially –

> "Women are only placed in Government refuges following a magistrates' order; there is nothing to suggest that the appellant would receive such an order, absent a renewal of violence against her."

28. The appellant argued that her husband would locate her wherever she was in Pakistan, if she registered with local authorities or sent her children to school, or used a public hospital. Further, she contended that internal relocation would be unduly harsh for her with four young children. She relied upon Dr Lyon's evidence that to do so, she would need to be able to depend on male family members.

29. In oral submissions, Mr Chirico said that if appellant's evidence was largely true, she was one of an unusual subclass of women victims who escaped, and to allow her to remain would not open the floodgates. The Secretary of State had not sought to resile from the position taken in his OGN; domestic violence was a serious problem in Pakistan, and there was no sufficiency of protection from the Pakistani authorities. If a person had the resources to set up on their own, he accepted that they might be able to relocate, but there should be a presumption that it was that unduly harsh to expect a woman to relocate unless you she was an educated professional woman.

30. In relation to credibility and to section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004, any diminution in credibility on these facts should be very small; refugees arriving in the United Kingdom should not be expected to be familiar with official procedures. The delay in claiming was not over a long period (about 4 days) and the appellant had explained that the solicitors had sent her to the Home Office. She had made no attempt to conceal her whereabouts or to disappear. A victim of domestic violence trying to leave the country without being seen would not go and get a passport to leave the country. The section 8 point had not been put to the appellant. It would be contrary to the thrust of the Refugee Convention to require the appellant to put herself at risk by seeking a passport, which might even require her husband's permission.

31. Section 8 should not be the starting point for consideration of credibility, and in relation to the apparently conflicting evidence about her arm injury, the Tribunal should be slow to infer that the appellant was trying to mislead. Her behaviour next day was reasonable; she had been in pain overnight, leading to a decision by the appellant, family and neighbours to go to police station. The whole street had mobilised to back her up and the First Information Report indicated that she had attended with a bandaged arm. The medical evidence recorded an appearance of her upper arm which was 'consistent with' what she described. He asked the Tribunal to find that the appellant had suffered ongoing violence from her husband as described.

32. Mr Chirico accepted that the First Information Report was not entirely satisfactory, especially as to where exactly she was injured, but the appellant had not written it herself. There was no challenge in the letter of refusal to the medical report and death certificates, only to the First Information Report. The Tribunal should place very little weight on the perceived discrepancy regarding the 'open wound'.

33. Marital violence had escalated to such a point that the appellant had the nerve to go to police and with her parents and neighbours. He asked the Tribunal to accept the veracity of the First Information Report. The appellant had given evidence of attempts by her husband to persuade her to withdraw the First Information Report while she was still living at her parents' house during period of childbirth and immediately after. After her return, the incident was mentioned during episodes of violence, but not otherwise. Dr Wenonah Lyons' evidence had not previously been challenged and had given a thorough and concise account of the difficulties; she was plainly aware of her duty to the Court and her opinion on effectiveness of protection was based on her own experience as to what a person in the appellant's situation might, plausibly, do. Her conclusions were in line with the Operational Guidance Note.

34. Mr Chirico accepted that the appellant's evidence of risk was now over two years old, but there was no evidence of any divorce and nothing to suggest that her husband would be less angry with her than immediately before she left. He had, historically, wanted to keep her under his thumb in his house and had negotiated her return through her parents. She now had a child by another man. If returned to Pakistan, she would show up with a child whose origin was inexplicable and that would put her at very serious risk under the Hudood ordinance, as it would constitute further perceived dishonour to her husband in the context of the background evidence.

35. He invited the Tribunal to find that there was an ongoing risk and a reasonable likelihood that the appellant's husband was still interested in her. His political connections were not exaggerated, and would affect the available domestic protection in her home area, as well as during internal relocation; anywhere which passed the undue harshness test was the kind of place where her husband could track her down. The appellant was a single woman with 4 young children, who had never worked and would have to make arrangements for her children, which would make her visible to her husband if he was still looking for her.

36. The Tribunal asked about the birth certificate for the latest child. It was not before us; Mr Chirico observed that it had never previously been asked for. He sought instructions and the appellant, who was now present, said that the birth certificate was with NASS. She had not inserted the father's name but could do so, in future if she ever wanted to give the father's name. She did not say that she was unable to do so although earlier, her case had been that she did not know his second name and was unsure of his first name. There is a mystery about this child. Mr Chirico submitted that the changes in Pakistan since time of *Shah and Islam* did not amount to domestic protection and do not require you to differ from the Operational Guidance Note view. He asked us to substitute a decision allowing the appeal

37. There was no reply on behalf of the Secretary of State.

Determination and reasons

38. The Tribunal reserved its determination, which we now give. We have considered the oral and written evidence on the appellant's behalf, the death certificates, medical evidence and First Information Report and the bundles of documents submitted by both parties, together with the current Country of Origin Information Service Report (October 2005) and Operational Guidance Note relating to married women in Pakistan. We approach this decision on the basis that the appellant has given a broadly credible account

of a difficult marriage in which suspicions about her fidelity on the husband's side, and frustrations about the husband's gambling habit on the wife's side, resulted in rows and regular domestic violence, though not causing lasting harm except in relation to the event in January 2001.

39. We also accept the appellant's account of filing a First Information Report about that incident, supported by her parents and neighbours; we do not regard as reliable the document produced as a First Information Report now as we do not accept that local police would give it to the appellant's friend A, who is not a party to the document. We accept the argument that if the document was obtained by a bribe, that makes it even less reliable. However, we accept to the lower standard appropriate for these Conventions that the Lahore police may well have a record of the 2001 incident on their files, which would show a broken upper arm. We also accept that hospital treatment was required for that injury, and that after the birth of their third child the appellant returned to her husband, finally leaving him in his absence and taking with her a substantial amount of cash and jewellery. There is no evidence at all that he has pursued her; we recall that he does not regard her children as his, and that he does not appear to have pursued his first wife. We accept the appellant's assumption that he may well have divorced her in her absence, and that if she is still married, it is in name only.

40. We note that the usual risk of forced return at the hands of senior family members is no longer a risk in this case. The appellant has no surviving parents, uncles or aunts. Her three sisters are living in the one-room compounds of their in-laws. Nobody, other than her husband, is in a position to attempt to force her to return to him now. There would be an extant record of his past abuse at the local police station. The appellant had a supportive friend in Lahore. The appellant has lived with friends here in the United Kingdom, and has also received NASS support. She did not spend her 4 Lakh rupees in coming here. She may still possess jewellery and some financial resources to use if she were to be returned.

41. We considered Dr Lyon's report on country conditions. The criticisms of it are well-founded; it is an honest attempt to deal with the appellant's pleaded case, but it lacks rigour and sources. The only point of interest relates to refuge availability on return. Dr Lyon accepted that there would be short-term support in a refuge if the appellant were returned and her husband pursued her. She gave examples of women killed in those refuges by 'determined family members' but we remind ourselves that the appellant's parents are dead, and when alive, were sympathetic. We consider later whether the husband is likely to be sufficiently determined to pursue this appellant, even if he knew she had returned.

42. We also remind ourselves that the husband's threats were that he would 'divorce and kill her' or 'divorce her and kill the children'. He was previously divorced by his first wife. He had not harmed that woman and we consider it much more likely than not that in the years since 2003, he has divorced this apparently unsatisfactory second wife, and married a suitable third wife; he can certainly afford to do so, subject to his gambling habit.

43. Having regard to the lower standard appropriate in refugee and human rights claims, we accept that the evidence of this appellant has a core of credibility, but in our view, has been substantially embellished to her advantage since her arrival in the United Kingdom. We accept that there was an incident of some sort which resulted in estrangement during her third pregnancy, but we do not accept that the First Information Report is an accurate

record of that incident. The appellant may well have filed a First Information Report, but the document produced simply does not match her account of the circumstances; we consider that document to be an embellishment of the original account.

44. We accept that the situation for women at risk of domestic violence in Pakistan remains very difficult; the question for us is whether this woman remains a member of that group. We considered the country guidance decision in *SN& HM (Divorced women – risk on return) Pakistan CG* [2004] UKIAT 00283 at paragraph 48 -

> "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."

45. We considered first whether the appellant had 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. The appellant produced no evidence which satisfies this Tribunal that her husband has any continuing interest in her, or is even still married to her. We do not find that the evidence of present risk is satisfactory, even to the lower standard appropriate for these Conventions. Her case, on *SN and HM* principles, would accordingly fall at the first hurdle.

46. Even if we are wrong about that factual aspect of this appeal, the appellant must still show 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, and that such a risk and lack of protection extends 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.

47. In this case, the appellant is a middle-class woman, educated to secondary school level, with good friends here and in Pakistan as well as three sisters. Lahore is the second largest city in Pakistan and the capital of the Punjab. The last population census in 1998 showed a population of over 5 million people, of whom 2.4 million were women. Pakistan has a population of over 161 million people and a land mass of over 300,000 square miles (excluding the disputed areas of Kashmir). It is not disputed that there are shelters available for victims of domestic violence in Pakistan, albeit (as always with such resources) limited, and in some respects unsatisfactory. Nevertheless, there is some protection available, should the risk to her remain. If *SN and HM* is the test, this appellant's appeal cannot succeed.

48. Mr Chirico's challenge is to the *SN and HM* approach overall, and we therefore considered whether he is correct in his contention that the information which underlay that decision is out of date. In this respect, Mr Chirico relied upon the respondent's Operational Guidance Note as an admission by the respondent that a person such as this appellant is at risk, from which, he argues, the respondent cannot now resile.

49. We reminded ourselves of the purpose of an Operational Guidance Note as set out at paragraph 1 of the Note -

> "1.1 This document summarises the general, political and human rights situation in Pakistan and provides information on the nature and handling of claims frequently received from nationals/residents of that province. ***It must be read in conjunction with the CIPU Pakistan Country Report April 2005 and any CIPU or COI Service Pakistan bulletins[1].***
>
> 1.2 This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave"

50. The first point to be taken from that preamble is that the OGN cannot, as Mr Chirico argued that it could, be treated as a document separate from the current COI Service report; however, where it concedes that there is a risk to a particular class of person, then it must be considered as a statement of his views of the country in question on the date of the OGN. Of course, information received subsequently may affect that statement.

51. We considered the wording of the domestic violence part of the OGN, in paragraph 3.8. The OGN records the Secretary of State's view as at July 2005; it notes the prevalence of domestic violence, affecting one out of every two women, with the National Commission on the Status of Women calling for specific domestic violence legislation. Abusers could be charged with assault but (paragraph 3.8.3) cases were rarely filed. Police and judges were reluctant to take action, women were usually returned to their abusive family members, and were reluctant to pursue charges because of the stigma attached to divorce and their economic and psychological dependence on relatives. Relatives were reluctant to report abuse for fear of dishonouring the family reputation.

[1] ***Emphasis added***

52. At paragraph 3.8.4, the Operational Guidance Note records criticism of the shelters available to women, but that the Pakistani Government had criticised violence against women. However, it is clear that NGOs and the Government provide some shelters for abused women. The Operational Guidance Note then considers sufficiency of protection, recording the discriminatory legal code in Pakistan. Police failed to register or investigate cases (however, we note that on her own account, this appellant's case is registered). Comments on the Hudood system are not relevant here; there is no First Information Report against the appellant, either for adultery or for the admitted theft of jewellery and cash (paragraph 3.8.7). The Operational Guidance Note further records that -

> **"3.8.8** The Pakistani authorities have not demonstrated a willingness or ability to punish or deter those who abuse their wives, and therefore cannot be considered to provide sufficient protection to wives in fear of domestic violence."

53. Mr Chirico relied particularly on the commentary on internal relocation in the Operational Guidance Note -

> **"3.8.9 Internal relocation.** The Pakistani law provides for freedom of movement, foreign travel, emigration and repatriation however, the Government limited this in practice. Taking into account the general position of women in Pakistani society where they are subordinate to men, may not be educated or even literate, and may have to depend on relatives for economic support internal relocation may be unduly harsh for women who are genuinely fleeing a serious risk of serious domestic violence. Factors such as the social and professional background of the individual claimant should be considered when determining relocation as an option. Educated and professional women may however find it possible to support themselves in alternative locations…
>
> **3.8.11 Conclusion.** As noted above, case law has confirmed that Pakistani women are members of a social group within the terms of 1951 Refugee Convention. Asylum claims from Pakistani women who have demonstrated that they face a serious risk of domestic violence which will amount to persecution or torture or inhuman or degrading treatment must be considered in the context of individual circumstances of each claim. In individual cases a sufficiency of protection by the state authorities may not be available, and although internal relocation may be possible in some circumstances, where it is not, a grant of asylum will be appropriate."

54. The Pakistan COI Report for October 2005 post-dates the OGN by three months. The relevant passages are at 6.143-6.145 and 6.158 -

> **"DOMESTIC VIOLENCE**
>
> 6.143 The US State Department Report 2004 (USSD), published on 28 February 2005 recorded that:
>
> "Domestic violence was a widespread and serious problem. Husbands frequently beat, and occasionally killed, their wives, and often newly married women were abused and harassed by their in-laws. Dowry and family-related disputes often resulted in death or disfigurement through burning or acid…During the year, there were 193 cases of stove deaths, many of these related to disputes with in-laws.

According to the HRCP [Human Rights Commission of Pakistan], one out of every two women was the victim of mental or physical violence. The National Commission on the Status of Women has called for specific domestic violence legislation. In its absence, abusers may be charged with assault, but cases rarely were filed. Police and judges were reluctant to take action in domestic violence cases, viewing it as a family problem. Battered women were usually returned to their abusive family members. Women were reluctant to pursue charges because of the stigma attached to divorce and their economic and psychological dependence on relatives. Relatives were reluctant to report abuse for fear of dishonoring the family reputation."

6.144 Following allegations of abuse at a woman's shelter in Hyderabad, the Integrated Regional Information Networks (IRINNEWS.ORG) reported on 16 August 2004 that "Human rights activists have called for drastic reforms in the existing structure of the state-run women's shelters across the country." The article further reported that:

"In a conservative society like Pakistan, where 70 to 80 percent of women, according to HRW [Human Rights Watch], face domestic violence in the form of physical, sexual and verbal abuse, such centres were established to give women support in their hour of need. But such essential services need proper support, activists maintain.

"Existing state-run women's refuge centres are like 'dumping places' and sub-prisons. Once a woman enters, she can't leave without obtaining a court order," Khalida Saleemi, director of Struggle for Change (SACH), an NGO working for the rehabilitation of violence victims, told IRIN in the Pakistani capital, Islamabad.

"Counselling is one of the most critical needs of women in refuge centres as all of them live under stress, but, none of these abodes have in-house councillors," Saleemi said, adding that the government should arrange proper medical and psychiatric services for physically injured and emotionally disturbed women."

6.145 The IRIN report also noted that:

"The protection and safety of women in refuges has always been a critical issue. Religious conservatives have often raised concerns over the security situation in these centres and have accused those running such facilities several times of exploiting female residents. Allegations that stem from cultural norms that define a woman's place as being in a male-dominated household.

Additionally, rights activists observe that the rules for visitors are also often violated. In some cases, people are allowed to go inside the shelters without formal permission from the designated authority. While on the other hand, human rights workers are denied access."

ASSISTANCE AVAILABLE TO WOMEN

6.158 The US State Department Report 2004 (USSD), published on 28 February 2005, stated that:

> "The Government has criticized violence against women. Its Crisis Center for Women in Distress refers abused women to NGOs for assistance. During the year, the NGO Struggle for Change, which operated a shelter for abused women, provided rehabilitation assistance (shelter, employment counseling, and legal aid) to 67 women. An additional 157 women received legal or financial assistance. Provincial governments operated shelters for women in distress at the district level. In some cases, managers of such shelters have abused women in their care."

General conclusions

55. Having considered the Country of Origin Information Service Report (COI Report) and the OGN, which is designed to assist caseworkers in making initial decisions, we find that, unsurprisingly, the OGN takes matters little further than does the COI Report. In most cases, the evidence is that families will not support a woman in a domestic violence situation, and police may be reluctant to register FIRs. However, where there is family support, there is the power for abusers to be charged with assault and although domestic violence is prevalent, the National Commission on the Status of Women is calling for specific domestic violence legislation.

56. It will be noted that whilst the COI report establishes credible evidence of domestic abuse (one in two women) the risk to women is from their husbands, in-laws, or birth families, both within and without the shelters. Where, unusually, a woman has been able to register a FIR and to access family and local support the risks set out in the COI are not relevant.

57. We do not, having considered the objective evidence, find that the *SN and HM* step by step approach is out of date, nor that the country evidence indicates any worsening in the position of women at risk of domestic violence in Pakistan: rather, it appears that the intention of the authorities is to improve State protection, although progress is slow. Every case will still turn on its particular facts and should be analysed according to the test set out at paragraph 48 of *SN & HM (Divorced women– risk on return) Pakistan CG [2004] UKIAT 00283.*

FS's case

58. We return therefore to the facts of the present appeal. We note the previous credibility finding, but this is a rehearing on all grounds. Having seen and heard the appellant give evidence, and considered all the documentary materials as well as her account over time, we accept the evidence of some domestic abuse, the worst incident being that in January 2001, when, on the appellant's case, her entire street supported her, and her family took her to the Police Station with all the neighbours to register a FIR. It follows that this appellant is one of the fortunate few who have no fear of accessing State protection and have done so successfully. Her parents did not force her to return to her husband; they took her back, with her children, for the rest of her pregnancy. They sheltered her, borrowed money to pay for treatment to help her recover, and (with the help of local elders) renegotiated her marriage before returning her. The First Information Report remains on record. The appellant's parents are dead and could not now force a return to her husband or pursue her to any shelter. Her sisters live with their in-laws.

59. There is no evidence which satisfies us that the appellant's husband wishes to see her, or the children, or to do her harm now. We do know that he permitted his first wife to divorce him and apparently did her no harm thereafter. There is no evidence that the appellant's remaining family in Pakistan would reject her, and her friends are supportive. The risk of any difficulty on return is well below the low standard required to engage these Conventions.

60. As regards the child born in the United Kingdom, the appellant's evidence as to his parentage is curious; we have not seen a birth certificate and her evidence that his father is a person with whom she had a casual affair in her friend's home, of whose first name she is unsure, and whose second name the appellant never knew, sits ill with her respectable middleclass upbringing and the continuing social support from friends of her school friend A, here in the United Kingdom. We cannot exclude from our consideration the possibility that this child is her husband's and that the breach in family life which lies at the heart of this appeal is a fabrication. If the appellant returns, she returns with four children whom her husband does not accept as his own, rather than three. She may well suffer some hardship, returning to Pakistan with a family of four children, but she does have both social and financial resources to sustain her and we do not consider that the risk on return engages either the Refugee Convention or the ECHR at the high and demanding level appropriate for foreign cases.

61. The Tribunal has already found that there was a material error of law in the second Immigration Judge's determination. We are required to substitute our own decision. Our decision is that the refugee claim fails and the Article 3 ECHR claim fails with it. The appellant indicated at the hearing that there is no Article 8 claim. Accordingly, the entire appeal is dismissed.

DECISION

The original Tribunal made a material error of law.

The following decision is accordingly substituted:

1. **The appeal is dismissed on asylum grounds**
2. **The appeal is dismissed on human rights grounds.**

Signed **Dated: 19 February 2006**

Mrs J A J C Gleeson
Senior Immigration Judge

DOCUMENTS BEFORE TRIBUNAL

Authorities considered -

1. *SN and HM (Divorced women – risk on return) Pakistan CG* [2004] UKIAT 00283
2. *MG (assessing interference with private life) Serbia and Montenegro* [2005] UKAIT 2005

Personal documents relating to this Appellant –

3. Medical report of Dr J Taghipour, [27 June 2003]
4. Doctor's letter from Dr Mansoor Ahmed of Jamil Hospital, Lahore, confirming that he treated the appellant in January-February 2001
5. First Information Report dated 3/1/2001 recording appellant's complaint to police about attack on her on 2/1/2001
6. Death certificates for appellant's father [died 18 December 2001] and mother [died 15 March 2002], both obtained 5 August 2003.
7. Skeleton argument of Mr Chirico [13 March 2005]
8. Chronology of events
9. Appellant's statement [25 February 2005]
10. Expert report of Dr Wenonah Lyon [September 2003]

Country background documents-
For Secretary of State –

11. Pakistan Country of Origin Information Service Report (October 2005)
12. Statement by Mrs Nilofar Bakhtiar (Advisor to the Prime Minister and In-Charge, Ministry of Women Development) on behalf of Pakistan Permanent Mission to United Nations, March 2 2005, on "Women 2000: Gender Equality, Development and Peace for the 21st Century" given at the High-Level Plenary Meeting of the 49th session of the Commission on the Status of Women.
13. Pages downloaded from website of Soc for Human Rights and Prisoners' Aid (SHARP) a Non-Governmental Organisation registered with its headquarters in Islamabad, Pakistan.
14. Home Office Operational Guidance Note Pakistan 01/07/2005

For Appellant

15. U S State Department Report for Pakistan, 2004 [published 28 February 2005]
16. Amnesty International Annual Report 2005
17. Amnesty International article "Pakistan Insufficient Protection of Women" [2002]
18. Human Rights Watch annual report 2005
19. Human Rights Watch articles: "Pakistan's moderates are beaten in public" [2004], "Forms of Violence against Women in Pakistan" [2004] and "Letter to Colin Powell on Women's Rights and Democracy" [2002]
20. Human Rights Commission of Pakistan Article "Women Leaders' Manhandling Shameful" [2005]
21. Crescent Life article "Is domestic violence endemic in Pakistan?"
22. Tel Med Pak article on domestic violence [2000]
23. Articles on acid attacks and violence against women in Pakistan [various]
24. Human Development Foundation article on domestic violence
25. EPIC Project Information on parties and candidates [2004]