

Between:

Y

APPLICANT

– AND –

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL

AND THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of Mr Justice Max Barrett delivered on 17th July, 2019.

1. Ms Y, a national of Pakistan, is a *sur place* asylum-seeker. The IPAT has made a decision refusing to grant her a declaration of refugee or subsidiary protection status and Ms Y seeks to challenge that decision. Ms Y has two daughters (minor children) who were included in the decision to refuse her international protection. It is her relationship to those children that is at the heart of the within application. Both of the children are non-marital children, born in Ireland. Ms Y is concerned that if she is returned to Pakistan, she will be treated as an outcast for having had children outside marriage; her children too, she claims, will likewise be treated as outcasts and exposed to all manner of discrimination.

2. Turning to the Impugned Decision, a number of difficulties present. Under the heading “*Objective Basis*”, the IPAT offers three reasons for reaching the conclusion that “[T]here is not a reasonable chance that if she [Ms Y] were to be returned to her country of origin she would face a well-founded fear of persecution”:

Reason 1: “*The Appellant left Pakistan to study in the UK...[when she was] 33 years of age....The Appellant was not born in Pakistan but moved there with her parents in her teens, aged 15 years approximately. This means she spent a considerable period of time in Pakistan without incident...whilst pursuing education up to and including a Masters...whilst at the same time working for 15 years on a self-employed basis as a teacher from home. Most importantly, there has been no evidence of past persecution by the Appellant whilst in Pakistan by any state authority or by her community or society at large in her home area of [place stated]...Consequently, there is no presumption of future harm against the Appellant.*”

Court Note: While this reason may make sense concerning another aspect of Ms Y’s application that is not the subject of this judgment, viz. her sexuality, it makes no sense when it comes to her being the mother of two children outside of marriage. Those children were only born in Ireland, so there would be no evidence of past persecution: they did not exist during Ms Y’s past in Pakistan.

Reason 2: “*There is general societal harm against women from available current reputable COI as already cited and elsewhere and Pakistan’s human rights observance leaves much to be desired. However, those failings are not judged by the Tribunal to constitute persecution of a high enough level to qualify for refugee status. They are acts of omission rather than commission by the Pakistan authorities. The Appellant does not fear any actors of harm from the State or community, and she has not experienced any discrimination in the past.*”

Court Note: Again, while this reason may make sense concerning another aspect of Ms Y’s application that is not the subject of this judgment, viz. her sexuality, it makes no sense when it comes to her being the mother of two children outside of marriage. Those children were only born in Ireland, so there would be no evidence of past persecution: they did not exist during Ms Y’s past in Pakistan. Additionally, the notion that Ms Y “does not fear any actors of harm from the State or community” is not borne out by, e.g., the s.35 report, which reads, *inter alia*, as follows:

“Q.58 The other reason that you are afraid to return to Pakistan is that you have had children outside of wedlock. Is that correct?

A. Yes...

Q.61 Would it be fair to say that you are now much older...and that you would be able to take much better care of yourself and your daughters through, for example, moving to another part of Pakistan?

A. That’s not possible. If there is no man with me, who will provide for me? And these two girls will be treated like [dirt]...just like call girls. [Court Note: This is clearly a fear of societal/community discrimination]....

Q.66 Who in your family do you fear?

A. My dad. My brother. And the society. [Court Note: Strikingly, even when the questioner turns specifically to fear of family, Ms Y broadens matters, pointing to a wider fear of society.]...

Q.68 Could you seek protection from the Pakistani authorities?

A. No because my family is gonna find out. My father is a religious personality of [named place]...and I’m scared if somebody see me, I will get in trouble and my daughters will get in trouble. And authorities will do nothing. [Court Note: This is clearly a fear of official tolerance of maltreatment of women. There is also separate mention in Ms Y’s asylum application that if her children were discovered in Pakistan to be non-marital children, they would face deprivation of educational provision, though it is not entirely clear whether this would be as a result of State action and/or community and social discrimination].”

Reason 3: Though offered as a reason, Reason 3 is not a reason, it is a statement of conclusions, having regard to what has previously been stated:

"In those circumstances, the Tribunal is not satisfied that there is a reasonable degree of likelihood of the Appellant and/or her daughters being harmed in circumstances where the rest of the claim has been rejected and there are no specific actors of persecution. In short, the Appellant's fear is not a well-founded fear. Consequently, the Appellant's refugee claim is rejected and the Tribunal will not consider state protection or internal relocation."

[Court Note: Reason 3 is not a free-standing reason. It cannot stand if Reasons 1 and 2 cannot stand and they are deficient for the reasons stated.]

3. Separately, complaint is made by Ms Y that the IPAT did not assess a core claim on the basis that the term 'single mother' as applied by the IPAT is not an adequate classification. The court considers this complaint to be without merit for two reasons:

(i) Ms Y herself complained (and the written submissions of her counsel acknowledge that she complained) that she was at risk of persecution on the basis, *inter alia*, of her status as a single mother. The IPAT then assessed her complaint as presented. That is exactly how matters should have proceeded.

(ii) the IPAT clearly understands that it is the non-compliance with a Pakistani societal norm (that of having children within wedlock) that is at issue. So, for example, at para.4.1 the IPAT, under the heading "*Assessment of Facts and Circumstances*", states that "[T]he Appellant alleges that she is a single mother and that would cause her to be at risk of discrimination and place herself and her two daughters in danger in Pakistan." And the COI quoted at p.24 of the Impugned Decision shows a clear understanding by the IPAT of the societal issues that can present in Pakistan in terms of the treatment of women.

4. Two questions were contended in the written submissions to arise from the pleadings, which the court answers hereafter by reference to the foregoing:

(1) Q. Has the IPAT failed adequately to identify and/or analyse a core element of Ms Y's claim, namely that she is at risk in Pakistan as an unmarried mother? A. No.

(2) Q. Has the IPAT erred in its assessment of objective risk of harm to Ms Y by reason of the foregoing failure to identify properly a core element of Ms Y's claim. A. The question is premised on the notion that the answer to Question (1) is 'yes'; however, the court's answer to Question (1) is 'no'.

5. Notwithstanding the answers to the two questions just posed, having regard to the deficiencies identified at para.2, the court will grant the limited order of *certiorari* that was contended for by counsel for Ms Y at the hearing of this application.