



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/00461/2014

THE IMMIGRATION ACTS

Heard at Field House
On 12th November 2015

Decision & Reasons Promulgated
On 7th December 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

BJ

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Richardson, Counsel instructed by Majestic Solicitors Ltd

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order.

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The Appellant, a citizen of Pakistan, appealed to the First-tier Tribunal against the refusal of the Respondent on 21st January 2014 of her application for asylum in the

UK. Judge of the First-tier Tribunal K W Brown dismissed the Appellant's appeal and the Appellant now appeals with permission to this Tribunal.

2. The background to this appeal is that the Appellant arrived in the UK in April 2013 on a visit visa which she had been granted following an appeal to the First-tier Tribunal on 17th January 2013. The Appellant came to the UK and overstayed and claimed asylum on 7th January 2014. In summary the basis of the Appellant's claim is that she left Pakistan because her father had forced her into an engagement to a 60 year old man whom she did not want to marry and that her father had been violent towards her and that she feared return to Pakistan on that basis.
3. The First-tier Tribunal Judge found that the Appellant's claim was not credible. The judge found in the alternative that, even if he were wrong as to the Appellant's credibility, the Appellant could relocate within Pakistan. The judge also dismissed the Appellant's appeal in relation to Article 8 of the European Convention on Human Rights.

Error of Law

4. Permission to appeal was granted on the basis of quite lengthy Grounds of Appeal. Mr Richardson helpfully summarised those into three areas in which he claimed the First-tier Tribunal Judge erred. He contended that the judge erred in relation to his credibility findings, in relation to his findings as to the viability of internal relocation and in relation to his assessment of Article 8.
5. Firstly Mr Richardson conceded that the suggestion in the Grounds of Appeal that the judge erred in considering the psychiatric evidence after making findings of credibility was put more strongly than it should have been. He accepted that the judge made credibility findings, then made findings in relation to the medical evidence and then returned to credibility findings. He accepted that, whilst it looks like that the judge made credibility findings first, the grounds put the claim that this lead to an error too strongly. He submitted that the real problem with the determination was not the order in which the judge addressed the matters but the fact that the judge ignored the potential corroborative effect of the medical evidence. He submitted that the medical evidence is corroborative in terms of the Appellant's claim that she was forced to enter into an engagement and the judge ignored or failed to engage with the assessment by the psychotherapist that the Appellant's claim was credible.
6. Mr Richardson submitted that the judge failed to have regard to the history of referrals and the suicide attempts made by the Appellant and her psychiatric history. He submitted that the judge dismissed the whole body of evidence in relation to the medical issues and that this displayed an error of approach to the medical or psychoanalytical evidence. He submitted that the judge erred in placing no weight on the conclusions made by the psychoanalyst.
7. Ms Isherwood submitted that the judge did look at all of the medical evidence. She submitted that the judge considered the psychoanalytical report at paragraph 22 and in that paragraph the judge acknowledged that the psychoanalyst came to the

conclusion that the history provided to her by the Appellant was genuine. However, she submitted that it was for the Tribunal to assess credibility. She submitted that the judge considered all of the medical evidence at paragraph 11. She submitted that it was clear from paragraph 20 of the determination that the judge was aware of the Appellant's medical history in the UK.

8. Ms Isherwood submitted that the judge noted the Appellant's evidence as to her diagnosis of depression in Pakistan at paragraph 27. She submitted that the judge noted that the Appellant was depressed and suffered from anxiety at paragraph 51 and noted that there was no diagnosis of post-traumatic stress disorder although the Appellant had symptoms. She submitted that the judge dealt with the matter at paragraph 52 where the judge said that the evidence available to him was not conclusive that the Appellant has any serious mental health illness and not conclusive that any depression and stress she suffers is as a direct result of any ill-treatment she received from her father. She submitted therefore that the Grounds of Appeal amount to a disagreement with how the judge looked at the medical evidence.
9. I find that the judge dealt properly with all of the medical evidence before him. He considered all of the medical evidence. He considered the medical evidence in the round along with all of the other credibility findings. It was not for the judge to accept without question an assessment as to credibility from an psychoanalyst but the judge was clearly aware of the psychoanalyst's opinion in relation to this matter as indicated in paragraph 22. I am satisfied that the judge took into account all of the relevant medical evidence along with the other credibility findings and that the judge reached findings open to him in relation to this matter.
10. Mr Richardson's second main submission was that the judge applied the wrong standard of proof. He submitted that the judge referred to different standards as set out in paragraph 22 of the Grounds of Appeal. For example the judge used the words "*I doubt whether ...*" [49] and "*I do not consider that this report is conclusive ...*" [51]. He submitted that this displays that the judge applied the wrong standard of proof. He submitted also that the use of the word "*unreliable*" [47] and the phrase "*has no merit*" [54] demonstrates that the judge has not properly reasoned findings in relation to some of the evidence before him. He submitted that paragraph 49 demonstrates that the judge gave inadequate reasons.
11. He further submitted that the judge failed to have regard to what is known from country guidance cases and the background evidence when assessing credibility. He failed to consider that the cultural norm may be for the Appellant not to have met her fiancé.
12. Ms Isherwood submitted that it is clear from paragraph 10 of the determination that the judge applied the correct burden and standard of proof. She accepted that the terminology may be criticised but she said that the judge dealt with the evidence appropriately and the use of the terminology does not mean that the judge applied the wrong standard.

13. I have considered the determination as a whole and I am satisfied that the judge applied the correct standard of proof in relation to his assessment of all of the evidence. The finding at paragraph 49 in relation to the delay was a finding open to the judge on the basis of the particular evidence before him in relation to the Appellant's application for a visit visa to the UK and subsequent appeal against that and the evidence about the financial status of the Appellant's family. I am satisfied that these findings were based on the evidence before the judge and open to the judge on that basis.
14. I find that the judge's findings on credibility were open to him on the evidence before him and that he made no material error in his findings as to the appellant's credibility.
15. The second main issue raised by Mr Richardson relates to the judge's findings as to the viability of internal relocation. He submitted that the finding at paragraph 50, that the Appellant's brother could protect her was inadequate as it was not couched in terms of sufficiency of protection or of internal relocation. The judge said at paragraph 56: *"Even if I am wrong in my primary finding as to the appellant's credibility I have no doubt that the appellant who is a well-educated woman can live safely in another area of Pakistan"*. Mr Richardson submitted that the test is not whether the Appellant can live safely in another area but whether it is unduly harsh or unreasonable for the Appellant to relocate. He submitted that the judge has got it wrong. He submitted that the judge said that the Appellant could seek the assistance of women's groups or women's refuges if it was necessary for her to do so but has not taken a proper approach in relation to assessing whether it is reasonable for the Appellant to stay there or for how long the Appellant can stay in a women's refuge.
16. In relation to this matter Ms Isherwood submitted that the judge properly applied the country guidance in the decision in **KA and Others (domestic violence - risk on return) Pakistan CG [2010] UKUT 216** as set out in paragraph 56 and in the reasons for refusal letter. She submitted that the judge's assessment in relation to the Appellant being a single woman returning to Pakistan is taken directly from **KA** and that that finding was open to the judge and that this submission was a mere disagreement with the judge's findings.
17. As I have found above, the judge made credibility findings which were open to him based on the evidence before him. In these circumstances the judge did not need to consider internal relocation. However, even in considering internal relocation, I am satisfied that, although the judge used the phrase *"can live safely in another area of Pakistan"*, it is clear that in the rest of that paragraph the judge is considering whether it is reasonable for the Appellant to live elsewhere in Pakistan and I am satisfied that the findings made by the judge were open to him on the basis of the evidence before him as to the Appellant's family and personal circumstances.
18. Finally, Mr Richardson submitted that the judge's findings in relation to Article 8 were inadequate in that the judge said that he concurred with the reasons set out in the reasons for refusal letter but did not look at whether there were compelling reasons to consider Article 8 outside of the Immigration Rules [57]. He submitted

that the judge failed to consider the Appellant's mental health problems, her family in the UK and the evidence of the psychotherapist in this context.

19. Ms Isherwood submitted that the Appellant's submission of statements from her family members with the Grounds of Appeal was indicative of the fact that she had not put forward sufficient evidence before the First-tier Tribunal. At the first hearing none of the Appellant's family members gave oral evidence. There were no statements before the First-tier Tribunal Judge. She submitted that it could not be said that Article 8 is engaged. There was nothing put forward which differs from the position in the reasons for refusal letter and because of the lack of evidence any error that the judge made in relation to Article 8 is not material.
20. I am satisfied that the judge did not make any material error of law in considering Article 8 of the ECHR. In light of the judge's findings in relation to the circumstances in Pakistan the Appellant could not have demonstrated that it would be a breach of her private life under paragraph 276ADE of the Immigration Rules to return her to Pakistan. There was no evidence from the Appellant's family and the judge would have had difficulty in reaching a conclusion that the Appellant had demonstrated that she had established family life in the UK. The Appellant was aware that this would be an issue at the First-tier Tribunal but did not seek evidence from her family members to demonstrate the strength of any family ties.
21. I find that, although the reasoning of the First-tier Tribunal Judge is brief and relates back to the reasons for refusal letter, there is no material error in the judge's assessment of Article 8 because he could not have reached an alternative conclusion on the evidence before him.

Notice of Decision

The decision of the First-tier Tribunal Judge does not disclose a material error of law.

The decision of the First-tier Tribunal shall stand.

Signed

Date: 30th November 2015

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date: 30th November 2015

Deputy Upper Tribunal Judge Grimes