



IAC-FH-AR-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/00645/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 30 July 2015**

**Decision & Reasons Promulgated
On 11 August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**R B
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss G Capel, Counsel, instructed by Tower Hamlets Law Centre

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought against the determination of First-tier Tribunal Judge Pears promulgated on 12 May 2015, pursuant to a grant of leave by First-tier Tribunal Judge Saffer dated 5 June 2015.
2. The appellant is a national of Bangladesh who had appealed the refusal of the Secretary of State to grant her asylum or humanitarian protection. The appellant's case before the First-tier Tribunal was that she was the victim of gang rape following which she and her family were ill-treated by members of her community and that she was ostracised and rejected by

her family. The case for the Secretary of State, to put it simply, was that her story was fabricated.

3. The judgment of First-tier Tribunal Judge Pears runs to some 86 paragraphs and the challenge is narrowly focused. Somewhat confusingly, in granting permission to appeal, Judge Saffer said this:

“This was plainly a difficult case. I am satisfied that it is arguable that, if as claimed, the appellant was gang raped, this may have had an adverse impact on her ability to give evidence and may have led to discrepancies which she should have had the opportunity to deal with in evidence. All the grounds may be argued although the others may have less merit.”

4. Miss Capel, who represents the appellant before me today, also appeared on her behalf before the First-tier Tribunal and settled the grounds of appeal. In opening the appeal to me, she candidly accepted that the basis on which permission was granted was not that pursued by her in the grounds of appeal. She very fairly accepted that there was something circular in the way in which the permission was articulated in that it presupposes that the appellant was indeed gang raped when the very point in issue was whether that had taken place or not.
5. Rather than pursue to confine herself to the grant of permission, Miss Capel with my leave, developed the three discrete matters particularised in her grounds of appeal. She fairly acknowledged that the judge in granting permission had stated that these matters “may have less merit”, she pursued them robustly and with tenacity.
6. The three grounds individually and collectively deal with the manner in which the First-tier Tribunal Judge assessed the evidence before him and in particular came to conclusions in relation to the credibility of the appellant, specifically in relation to the account which was given of the circumstances of the gang rape.
7. Miss Capel took me to paragraph 71 of the determination which lists in a series of bullet points what the First-tier Tribunal Judge categorises as contradictions in the appellant's account and implausibilities. Those enumerated under this paragraph are, in the judge's terminology, “the more important ones”. Eight bullet points appear at paragraph 71 and the grounds of appeal in paragraph 5(i) - (v) challenge various elements of those bullet points. It was properly pointed out by Mr Kandola who acts for the Secretary of State that paragraph 71 is no more than a summary of the judge's findings and in the substantial discussion of the evidence which lies between paragraphs 31 and paragraph 67 there is substantial comment upon the evidence dealing with individual matters as and when they arise.
8. The first ground of criticism relates to an alleged failure to put to the appellant matters relied on by the First-tier Tribunal Judge as important inconsistencies and implausibilities in the appellant's evidence. Miss Capel took me to the decision of **RR v Secretary of State for the Home Department [2010] UKUT 00375 (IAC)**. The only part of that judgment

to which she made express reference was the fourth paragraph of the headnote which says as follows:

“If the respondent does not put his case clearly it may be very difficult for the Tribunal to decide against an appellant who has not been given an opportunity to deal with the respondent's concerns.”

9. That statement of law and principle is uncontroversial and anodyne and I note that in the particular circumstances of RR the failure or oversight was not to put an allegation that injuries might have been self-inflicted. That, on any account, is a factual issue which was at the core of the case being put forward by the Secretary of State.
10. Miss Capel first makes reference to an alleged discrepancy between question 54 in the asylum interview and the question was “Did you get on with your in-laws?” to which the appellant replied “Yes” and her evidence later in the interview that her relatives rejected her following the rape. This was a matter which appears in the further bullet point of paragraph 71 where the First-tier Tribunal Judge stated
“She says at one stage her was on good terms with her in-laws and lived with them until she left Bangladesh but her current case is she was in hiding for over a year at her parents after her in-laws had in effect kicked her out and believed that she had an adulterous affair.”
11. I cannot see any justification for the criticism of the judge in recording what he did. The issues were clearly in play. It is accepted by Miss Capel that this was a reserved determination and not one given *ex tempore*. The purpose of reserved determinations is for judges to reflect upon the totality of the evidence. Clearly credibility was central to the case being advanced by the appellant. The Secretary of State's case was that the appellant's narrative was not credible. I do not consider that there was any requirement for the First-tier Tribunal Judge to invite specific submissions on each and every inconsistency.
12. A similar analysis applies in relation to the four further challenges which Miss Capel makes under paragraph 5 of ground 1. The second matter is a discrepancy between an answer to question 129 regarding where the appellant was living. The third matter relates to an alleged discrepancy regarding the number of children who were in the property. The fourth deals with the failure on the part of appellant to adduce evidence from her parents, although I put this to one side because, as Miss Capel has very fairly and very properly conceded, this was raised by the judge during closing submissions and Miss Capel took the decision not to make any application to reopen her case. She accepts that whatever may be the merit of her other points, this is not amongst the stronger. The fifth issue is that in the sixth bullet point reference was made to the fact that there was no mention of receiving a vaginal examination until the hearing and no mention of being unconscious was made when the earlier interview had taken place.
13. These grounds are fully argued in the written application and they have been supplemented by oral submissions with great skill and tenacity by

Miss Capel. Nonetheless for the reasons I have given, I am not persuaded that in relation to ground 1 there is any error of law because these matters were amongst a constellation of other points which the judge took into account in making his findings of contradiction and implausibility and all of those matters (not merely those highlighted by Miss Capel) were considered to be amongst "the more important ones".

14. In any event, issues of credibility are matters entirely for the assessment of the First-tier Tribunal Judge. The weight to be given to various aspects of both the oral and documentary evidence is similarly entirely within the province of the First-tier Tribunal Judge and notwithstanding the elegant argument of counsel, I can see no fault by the First-tier Tribunal Judge in the way in which he dealt with these matters.
15. I turn then to ground 2 which is a refinement of ground 1 addressing a more particular matter and again it is argued in the written submissions with skill and with thoroughness. The basis of ground 2 is that the judge failed to have regard to relevant matters when assessing the appellant's credibility, when coming to his conclusions in paragraph 71 and elsewhere. In particular the first point argues that the judge formed an adverse view of the fact that a gang rape lasting at least one hour was apparently inaudible from other buildings within the compound.
16. Miss Capel makes the point that the judge does not deal expressly with the appellant's evidence that her attackers were said to be holding her mouth and were uttering threats to her life were she to have screamed. I note that in paragraph 38 of the determination, when the First-tier Tribunal Judge is summarising the evidence, he makes reference to the appellant's screaming when the door was broken down. I do not consider that the conclusion the judge came to in this regard can be impugned. He heard all the evidence. He came to a balanced conclusion on what was before him and I do not consider it was incumbent upon him to go further than he did in explaining why he had come to that conclusion by specifically dealing with every matter individually.
17. The same applies to the three other points under ground 2 which are pursued by Miss Capel in this regard. Put shortly, her contention is that it is incumbent upon a First-tier Tribunal Judge that when an explanation is tendered by an appellant for matters which are in issue the determination needs to deal expressly with why that explanation has been rejected. In the particular circumstances of this case, I do not consider that that criticism is fairly made. It is a counsel of perfection for First-tier Tribunal Judges to deal with each and every point which may or may not be raised on the papers and elsewhere. I consider that in the course of this full, clear and detailed determination the judge properly discharged his judicial function and gave anxious scrutiny to the entirety of the evidence including such explanations as had been tendered. That he did not expressly mention each and every point is not in my assessment a valid source of criticism. This determination, considered in the round, is not one where he needed to go further on any specific matter. It is abundantly

plain what he decided and the basis upon which he came to his conclusions.

18. The third ground of appeal is headed by a typographical error but the ground pursued relates to implausibility. The criticism made of the First-tier Tribunal Judge is that he rejected wholesale the evidence given by three witnesses in relation to what they may or may not have heard about the applicant's circumstances. The particular part of the judgment where this arises is at paragraph 73 where the First-tier Tribunal Judge says this:

"I am afraid I reject entirely the evidence of the witnesses. There is implausibility in their account of being sufficiently interested in a person they did not know and happening to have connections in or near the same village (Bangladesh is hardly under populated country (160 million people according to Wikipedia). However they claim that not only did they hear passively about an incident but made enquiries and then coincidentally met her sometime after they were in Bangladesh. The interesting thing is that the appellant's case is that not only she was raped but her reputation was sullied but not one of the witnesses seem to have been told that and certainly did not relay it in their evidence."

19. The Judge had dealt with the evidence of these witnesses substantively earlier in his determination, at paragraphs 52, 53 and 54. It is clear to me from those particular paragraphs, and from the determination as a whole, that the judge afforded proper weight to that evidence and that his conclusion on implausibility was one that was properly open to him in all the circumstances. Miss Capel did not take me to the passages in any of the authorities on implausibility mentioned in the written grounds. This is a matter which was properly determined on the facts. The First-tier Tribunal Judge heard from these three witnesses and came to the conclusion which he did. That was a legitimate conclusion. It was properly open to him on the evidence and not indicative of any error of law.
20. It follows that notwithstanding the attractive way in which this appeal has been advanced before me, it does not disclose any of law in the determination of the First-tier Tribunal Judge and must therefore be dismissed.

Notice of Decision

The appeal is dismissed.

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

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.

TO THE RESPONDENT: FEE AWARD

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

Signed *Mark Hill*

Date 4 August 2015

Deputy Upper Tribunal Judge Hill QC