



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/04049/2014

THE IMMIGRATION ACTS

Heard at Field House
On 7 August 2015

Decisions and Reasons Promulgated
On 14 August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

MR ABK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Asanovic, counsel instructed by AH Law Ltd
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. This is an appeal against a decision of FTTJ Del Fabbro, heard on 18 February 2015, in which he dismissed the appellant's appeal against a decision to refuse to grant him asylum.

Background

2. The appellant as well his wife, who is dependent upon his claim, arrived in the United Kingdom on 24 February 2011, having been granted leave to enter as a Tier 4 migrant until 31 July 2014. The appellant unsuccessfully sought further leave to remain on 25 November 2013 on account of being destitute. He made a further application for leave to remain on 9 January 2014, which was refused the same day. He applied for asylum on 2 June 2014.
3. The basis of the appellant's asylum claim is that he is at risk in Nepal, primarily owing to his mixed-caste marriage. The appellant is a member of a low caste, Bishwokarma, one of the Dalit castes whereas his wife is a member of the Brahmin caste. His wife's uncle, a senior member of the Maoist party, was particularly unhappy with the marriage and orchestrated the violent pursuit of the appellant as a result.
4. During the course of the hearing before the First-tier Tribunal, the appellant, his wife and a witness, Meena Varma, gave evidence. The FTTJ accepted that the appellant and his wife were of the claimed castes but rejected the claim that the appellant was not from an impoverished Dalit background. It was not accepted that the Maoist Party would permit itself to be used to persecute the appellant by one of its members; that it was not credible that the uncle of the appellant's wife pursued him or that the appellant was assaulted in 2011. Alternatively, the FTTJ considered that there was a sufficiency of protection for the appellant in Nepal or that he could internally relocate.

Error of law

5. Permission to appeal was sought on the basis that it was arguable that the FTTJ had no regard to the background evidence before him; that he erred in preventing questions from being put to the appellant's witness and that an alternative case under Article 8 ECHR was not considered. The FTTJ granting permission considered that the grounds showed an arguable error of law.
6. The Secretary of State's response of 4 June 2015 stated that the respondent opposed the application for permission to appeal as it was considered that the FTTJ appropriately directed himself; that the grounds amounted to no more than mere disagreement with the findings of the FTTJ; the FTTJ's treatment of the witness was wholly appropriate and if the witness had materially important evidence it should have been addressed in the witness statement.

The hearing

7. Immediately prior to the hearing, Ms Asanovic submitted a supplementary note in which she sought permission to rely on an additional ground of appeal, arguing that the FTTJ's findings were contradictory. She repeated that application before me and after hearing from Mr Tarlow, I permitted her to amend the original grounds and extended the grant of permission to include this further matter. Ms Asanovic expanded on her written grounds, arguing that the FTTJ had made reference to the police report in [44] of the decision in order to support his findings that the Nepalese authorities were prepared to investigate the appellant's complaint, but that at [46] he had dismissed the report as unreliable. Similarly at [45] the FTTJ appeared to accept that it was the prejudices of the appellant's uncle's "which caused the animosity and violence towards them."
8. Thereafter, Ms Asanovic relied on the original grounds of appeal and expanded somewhat on the application, which had been drafted by counsel, Mr Blundell, who appeared before the FTTJ.

9. In relation to the first ground, Ms Asanovic took me to various parts of the background evidence, which was before the FTTJ. On the second ground, reference was made to the FTTJ's record of proceedings as well as Mr Blundell's note of the hearing. At this point, Ms Asanovic advised me that Mr Tarlow was taking no issue with Mr Blundell's witness statement, which accompanied the application for permission to appeal. With regard to the third ground, Ms Asanovic merely made the point that the FTTJ's decision made no reference to the alternative submissions in paragraph 19 and 20 of Mr Blundell's skeleton argument.
10. For his part, Mr Tarlow, argued that there was material error in the FTTJ's decision. He was of the view that it was open for the FTTJ to find as fact that the appellant would be discriminated against but that this would not amount to persecution. In terms of the evidence of the witness Ms Varma, Mr Tarlow asked me note that the FTTJ heard some evidence from her but that it was a matter for him to decide whether he wanted her to be questioned further.
11. The background evidence before the FTTJ included one bundle of 166 pages of material, a second bundle with 76 pages and a supplementary bundle, which contained an additional 4 newspaper reports. Also present on the IAC case file was a draft expert report from David Seddon dated 7 July 2014.
12. The decision of the FTTJ made several references to the background evidence relied upon by the appellant. At [13], he records that he has "*considered all the voluminous evidence in the bundles before me,*" at [41] he says that he has "*given careful consideration to all the evidence including a careful analysis and assessment of the objective evidence before me*" and at [42] "*I find on the objective evidence that membership of a Dalit caste does not in itself bring such discrimination as to breach minimum threshold standards.*"
13. The difficulty with the FTTJ's approach was that he failed to engage with the background evidence or refer to a single page or extract from the background evidence before him. Mr Blundell's skeleton argument helpfully referred the FTTJ to particular extracts, which supported the appellant's case. The appellant relied upon a wide range of reports, which included but was not limited to references to Dalit people being subjected to violence to prevent participation in inter-caste marriages, the reluctance of the police to file a case against perpetrators of such violence, high resistance in the general population to inter-caste marriages and the imprisonment of Dalits who marry outside their caste owing to false cases being filed against them. While the FTTJ reached a finding that the appellant was not likely to be subject to discrimination amounting to persecution, he provided no reasons for this conclusion.
14. The FTTJ also erred in his treatment of the evidence of Ms Varma. Counsel before the FTTJ, has provided a witness statement, which, with reference to his note of the hearing, states that the FTTJ prevented him from completing his examination-in-chief of Ms Varma. Mr Tarlow does not challenge that statement. Indeed, the FTTJ's record of proceedings goes some way to supporting Mr Blundell's evidence. It is apparent that after the FTTJ's intervention, examination-in-chief comes to a halt. As conceded by Ms Asanovic, Ms Varma's report lacked references, however as emerged from cross-examination, she had relevant qualifications and much of what she had to say was not inconsistent with the background evidence before the tribunal. Furthermore, while the FTTJ summarised Ms Varma's evidence at [32] of the decision, he does not proceed to assess her evidence either positively or negatively.
15. The aforementioned matters suffice for me to find there were material errors of law and to set the decision aside. Furthermore, I would also agree with Ms Asanovic that the FTTJ's findings on the police report and whether or not the appellant was targeted by his wife's uncle were contradictory. In addition, the FTTJ failed to address, even briefly, the two alternative arguments made by Mr Blundell in [19] and [20] of his skeleton argument.

16. In these circumstances I am satisfied that there are errors of law such that the decision be set aside to be remade. None of the findings of the FTTJ are to stand.
17. Further directions are set out below.
18. An anonymity direction was made by the FTTJ and I consider it appropriate that this be continued and therefore make the following anonymity direction:

“Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. ”

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision to be re-made.

Directions

- This appeal is remitted to be heard de novo by any First-tier Tribunal Judge except FTTJ Del Fabbro.
- The appeal should be listed for a hearing at Taylor House.
- An interpreter in the Nepali language is required.
- Time estimate is 4 hours

Signed

Date: 9 August 2015

Deputy Upper Tribunal Judge Kamara