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Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/10747/2014

### **THE IMMIGRATION ACTS**

At Field House  
On 3<sup>rd</sup> July 2015

Decisions and Reasons Promulgated  
On 28<sup>th</sup> August 2015

Before

**DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY**

Between

**MRS R.B.**  
(ANONYMITY DIRECTION MADE)

Appellant

And

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellant: Mr K.Shikder, Tower Hamlets Barristers Chamber.

For the Respondent: Ms Julie Isherwood, Home Office Presenting Officer.

### **DECISION AND REASONS**

**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.**

## Introduction

1. The proceedings before the First tier Tribunal were anonymised. No application has been made to change this and so this should be maintained. I am influenced by the fact that there are children affected by this decision.
2. The appellant is a national of Bangladesh. She came to the United Kingdom with her five-year-old son on 26 October 2010 on a six-month family visit Visa. Her husband and their three daughters remained behind in Bangladesh.
3. She subsequently made various in country applications for further leave to remain as a carer. These applications were unsuccessful.
4. On 2 July 2014 she claimed asylum. The basis of the claim was that her husband was violent towards her and she was afraid to return. The claim was refused on 25 January 2014.
5. Her appeal was heard before Judge Bennett of the First-tier Tribunal. He considered her appeal under various headings, including the Refugee Convention and on human rights grounds. The appeal was dismissed.
6. Permission has been granted to appeal to the Upper Tribunal on the basis it was arguable the judge applied too high a standard of proof and the decision may have been based upon a material mistake of fact in respect of injuries claimed.

## Consideration

7. Judge Bennett produced a comprehensive decision consisting of 55 pages. I asked Mr Shikder if he could direct me to anywhere in the decision where the wrong standard of proof is mentioned. He could not.
8. He referred me to the standard of proof in criminal cases as being beyond a reasonable doubt; in civil cases as on the balance of probabilities; and in asylum cases as more likely than not. He stated that the lesser standard should have been applied in the present case. This is uncontroversial. He submitted that the judge had applied the wrong standard of proof. He could not however direct me to a specific incident of this and I found his submissions amounted to a disagreement of the judge's factual findings.
9. He submitted that the situation for women in Bangladesh was poor and that the appellant had gone to the police about her husband but they would not help her. He sought to reopen the judge's findings in respect of relocation. However, the issue before me was whether there was a material error of law rather than a rehearing of the appeal. Mr Shikder said that there was evidence the appellant had a mark consistent with a cigarette burn and submitted that this evidence was ignored by the judge.
10. Ms Isherwood submitted the judge made negative credibility findings open to him on the evidence. She referred to how the appellant's account of her husband changed from when she made her applications for further leave to remain and when she made her asylum claim. The judge commented on this at paragraph 23. The appellant had not mentioned abuse originally and in the second application sought to convey the impression that their

separation was amicable. Paragraph 4 noted that the asylum claim was not made for nearly four years after the appellant had arrived. The medical evidence was properly considered. Ms Isherwood submitted it was open to the judge to consider section 8 of the Asylum and Immigration (Treatment of claimants) Act 2004.

11. She submitted the judge took a balanced approach. At paragraph 4 he referred to the country guidance decision of SA (divorced women – illegitimate child) Bangladesh CG 2011 UKUT 00254 which held that women in Bangladesh were part of a particular social group because of how they were treated. At paragraph 27 the judge referred to this country guidance case and the high level of domestic violence in Bangladesh.
12. Whilst not accepting the truth of the claim the judge went on to consider in the alternative relocation. Ms Isherwood submitted that the judge properly considered the law and the facts in this regard in concluding this was a viable option.

### Conclusions

13. I remind myself that this is not a rehearing of the appeal but is a consideration as to whether there is a material error of law. The application for permission to appeal was on the basis that the judge had applied too high a standard of proof. In support of this contention reference was made to paragraph 23 where the judge stated he was not satisfied he had been told the truth about the appellant and her husband and the claimed violence. Mr Shikder had suggested the judge had ignored evidence supportive of the appellant having been burnt by a cigarette.
14. The judge referred in the same paragraph to the medical evidence submitted. Notably this was dated in 2014 and did not meet the Istanbul protocol. The judge clearly considered the medical evidence, pointing out that the doctor had not expressed an opinion as to how marks occurred other than one which was consistent with a cigarette burn. I do not see any indication that the judge applied too high a standard of proof to this evidence in reaching his conclusion. The application suggested there was a material error of fact at paragraph 23 (i) (3) of the decision in suggesting that the appellant had not at any time in her asylum interview asserted that her husband had burnt her with a cigarette. Reference was made to the substantive interview where the appellant's representative in attendance had pointed out a translation issue in that the appellant had referred to 'birri', being a type of cigarette. In fact the judge does refer to this at footnote 8 on page 22. This is also referred to in a comment at paragraph 3.
15. It is important to consider a decision in the round. A decision may contain factual errors or use inaccurate phraseology. The issue is whether these make a material difference. In the present appeal the decision is particularly detailed. The judge acknowledged the vulnerable position of women in Bangladesh. He did not believe the appellant's claims about her fear of her husband. Reasons for doing so were given. The appellant came on a visit visa and made subsequent attempts to stay. It was only several years later when these had been unsuccessful did she claim asylum. Her

claimed fear was inconsistent with the content of the earlier applications. The judge commented on this and on the evidence presented. He assessed the medical evidence submitted. Notwithstanding his disbelief of the claim he went on to consider the position if it were true and the viability of relocation. A detailed assessment was given. As the respondent points if there were a material error in the assessment of credibility the claim would still fail on the relocation issue.

16. I find no material error of law in the decision. The judge has carefully considered all of the issues arising, has analysed the evidence and has given reasons for his conclusions. Leave was granted on the question whether the judge applied the correct standard of proof. I would refer to the first half of paragraph 18 where the judge correctly sets out the applicable standard of proof. At paragraph 23 the judge concludes that the appellant was not credible and provides detailed reasons. Notably, at paragraph 23-(h) the judge points out that corroboration is not necessary in an asylum or human rights claim. However, he goes on to point out correctly that legitimate questions can be asked were supportive evidence is not produced which should have been available. The judge referred to the appellant's claim that it was a solicitor in Bangladesh who helped her flee from her husband. The judge legitimately asks why her representatives did not contact those lawyers for confirmation. Ultimately I find the arguments advanced on behalf of the appellant amount to no more than an attempt to reopen the findings made.
17. I find the judge was entitled on the evidence and applying the appropriate standard of proof to conclude the appellant was not credible. The judge decided to go on to consider in the alternative the issue of relocation. The judge gave valid reasons why relocation would be a viable option at paragraph 28. These included the unlikelihood of her husband discovering she had relocated. The consideration included an assessment of possible contact by him through her daughters.
18. In summary, I find nothing in the decision in relation to the assessment of credibility; the medical evidence; or the question of relocation which would suggest the judge did not apply the correct standard of proof. As stated at the outset the appellant's representative could not refer me to an instance where the judge mis-stated the burden of proof. In the absence of any misstatement there is nothing to indicate that the judge's conclusions were unreasonable and could not have been sustained on the evidence. Therefore, I find no material error of law established and the decision dismissing the appellant's appeal shall stand.

Decision.

19. It is not established that the decision of First-tier Judge Bennett dismissing the appellant's appeal contains a material error of law. Consequently, it shall stand

Anonymity is maintained.

Signed

Deputy Upper Tribunal Judge Farrelly

26<sup>th</sup> August 2015