



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/02650/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
Reasons Promulgated
On 18 July 2016**

**Decision &
On 20 July 2016**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

**AB
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Head, counsel instructed by Lawrence Lupin Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. This is an appeal against a decision of First-tier Tribunal Judge Wylie, promulgated on 19 November 2015, in which she dismissed the appellant's appeal against a decision to refuse to grant her asylum.

Background

2. The appellant arrived in the United Kingdom as a visitor during 2005. She made two unsuccessful applications for leave to remain as a dependent relative during 2006 and an unsuccessful application on Article 8 grounds in 2014. A referral was made during 2014 to the National Referral Mechanism as the appellant claimed to be a victim of trafficking for domestic servitude, however it was concluded that she was not. The appellant sought asylum during 2014. The basis of her claim is that she suffered decades of ill-treatment in Bangladesh in that she was abused by an employer, kidnapped in Sylhet, abused in Chittagong and was embroiled in a land dispute with relatives whom she fears, having won the case. The Secretary of State rejected all aspects of the appellant's claim with the exception of her identity and nationality owing to what were said to be vague and inconsistent aspects to her account.
3. During the course of the hearing before the First-tier Tribunal, Judge Wylie heard evidence from the appellant's niece, SN, alone. The appellant being too mentally unwell to give evidence. Medical evidence showing that the appellant suffers from recurrent depressive disorder, Emotionally Unstable Personality Disorder and Post-traumatic Stress Disorder (PTSD) as well as a range of physical complaints was before the judge. An expert opinion of Dr Mina M Siddiqi regarding Bangladesh was also relied upon. The judge dismissed the appeal, finding that the appellant was not at risk of persecution or inhuman and degrading treatment on account of her mental health owing principally to the presence of family members in Bangladesh. No Article 8 case was advanced.

Error of law

4. Permission to appeal to the Upper Tribunal was sought on the basis that it was arguable that firstly, the judge had failed to take into consideration the evidence of the witness and not given sustainable reasons for not placing weight on her evidence. Secondly, the judge had made no findings as to the risk faced by the appellant given that it was accepted by the judge that she was kept in forced servitude in the United Kingdom. Thirdly, it was said that the judge had failed to point to any evidence to show the appellant could access the required protection on return to Bangladesh and lastly, that the judge reached contradictory findings.
5. Upper Tribunal Judge Kebede granted permission on the basis that it was arguable that the evidence actually given by the witness required further and closer consideration and "may arguably not have been fully appreciated or considered by the judge."
6. The Secretary of State's response of 23 June 2016 robustly defended the judge's decision, and argued that the evidence before the judge was that the appellant's sisters in Bangladesh had not mistreated her; they had

supported her both in Bangladesh and the United Kingdom and that the witness did not state in her evidence that the entire family would not be able to support the appellant.

The hearing

7. Ms Head relied on the application for permission to appeal and grant of permission. She explained that a narrow point was involved which went to the core of the case, that is whether the appellant's sisters in Bangladesh would be willing to offer her support. The only live evidence before the judge was that of the appellant's niece whose mother is one of the appellant's sisters.
8. Ms Head argued that the judge had ignored undisputed evidence of the appellant's ill-treatment by her brother in the United Kingdom as well as evidence that one of the appellant's sisters was unwell, without a support network of her own and reliant on her son who was not also willing to care for the appellant. Nor had the judge considered the evidence in relation to the appellant's son, whom the appellant gave birth to at the age of 12 and who had subsequently been cared for by others. The appellant's niece provided evidence of her contact with the son and his unwillingness to provide support to the appellant. Therefore, in finding that the appellant had a willing family available to her, the judge failed to consider all the evidence before and her and if that evidence was rejected, she had failed to give reasons for doing so.
9. Mr Melvin relied on the Secretary of State's Rule 24 response and argued that the findings made were open to the judge. He submitted that the decision as a whole implied a rejection of the evidence of the niece. He commented that it would have been helpful had the judge had rejected her evidence outright. The asylum claim was based on the appellant's "numerous" family members failing to assist her if she was returned to Bangladesh and the judge found this was not the case. He also adopted [5-6] of Judge Chambers decision refusing permission to appeal and asked me to find there was no material error of law.

Decision on error of law

10. Judge Wylie made a material error of law. Her decision is set aside, in its entirety, for the following reasons.
11. The judge accepted at [46] of her decision and reasons that single women in the appellant's position would be at risk of sexual harassment and that the appellant, owing to her mental and physical conditions was "particularly vulnerable." At [47] the judge found that the appellant had family ties in Bangladesh consisting of two sisters and a son as well as a brother in the United Kingdom who had previously offered her support both in Bangladesh and the United Kingdom. Nowhere in this decision is there any mention of the evidence given by the appellant's niece in her witness statement that the appellant's brother threw her out of his home and encouraged her to take her own life. The appellant acted on that encouragement and was

subsequently detained under a section of the Mental Health act 1983. In addition, the witness gave evidence that her own mother (the appellant's sister) was in poor health and in no position to assist the appellant. The other sister in Bangladesh was reliant on others and said to be unable to assist.

12. With regard to the appellant's son, the evidence before the judge was that he and the appellant had never enjoyed a close relationship given the circumstances of his birth at a time when the appellant was a child and that she had suffered post-natal depression. The evidence of the niece was that the son had been imprisoned in the context of a land dispute within the family and he was not willing to provide support to the appellant. In view of the fact that the crux of the case was the support available to the appellant, it was crucial that the evidence relating to the relatives in Bangladesh was carefully assessed. It cannot be implied from any reading of the decision that the judge considered and rejected this evidence. If she did so, then reasons for doing so ought to have been clearly stated.
13. 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 judge are to stand.
14. I considered listing this matter to be heard in the Upper Tribunal, in view of practice statement 7 of the Senior President's Practice Statements of 10 February 2010 (as amended), however the appellant has yet to have an adequate consideration of all aspects of her asylum appeal at the First-tier Tribunal and it would be unfair to deprive her of such consideration.
15. Further directions are set out below.
16. An anonymity direction was made by the FTTJ. I consider it appropriate for anonymity to 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 Judge Wylie).
- The appeal is to be listed for a hearing at Hatton Cross
- An interpreter in the Bengali (Sylheti) language is required.
- Time estimate is 3 hours.

Signed
Upper Tribunal Judge Kamara

Date: 19 July 2016