



IAC-FH-NL-V1

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

Appeal Number: AA/04305/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 20 January 2016**

**Decision & Reasons Promulgated
On 5 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**R K K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bellara, Counsel, instructed by Addison & Khan Solicitors

For the Respondent: Mr S Staunton, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Nightingale (Judge Nightingale), promulgated on 13 August 2015, in which she dismissed the Appellant's appeal on all grounds. The appeal to Judge Nightingale had been against the Respondent's decision of 24 February 2015, refusing the Appellant's application for asylum and making a decision to remove her by way of directions under Section 10 of the Immigration and Asylum Act 1999.

2. The Appellant's claim was essentially as follows. She was subject to an arranged marriage in India. In due course her husband and her husband's family abused her emotionally and physically. Ultimately the Appellant left India for the United Kingdom, arriving here in 2010 in possession of a visit visa. She claimed that whilst in this country she had a relationship with another man. Two children were born as a result of this relationship. The asylum claim was made on 23 September 2014. The Appellant asserted that she would be at risk on return to India as a result of the consequences of leaving her husband and having children from an extramarital relationship. Article 8 was also relied on.

The decision of Judge Nightingale

3. In a thorough and well-structured decision Judge Nightingale first set out the relevant evidence, the Respondent's grounds for refusal, and the submissions of both representatives. Her findings of fact and reasons begin at paragraph 52 and run to four pages. She sets out numerous adverse findings on credibility, together with reasons.
4. At paragraph 62 Judge Nightingale concluded that the birth certificates of the children did not in effect contain reliable evidence as regards their paternity and she concluded that the children had not been born as a result of an extramarital affair, as claimed. Taking all of her findings into account Judge Nightingale concluded that the Appellant's claim was false and as a result there was no risk to her and/or her children on return to India.
5. Judge Nightingale then went on and considered Article 8 outside of the Rules (success under the Rules having been conceded as impossible by the Appellant's representative). The judge found that in light of her findings of fact Article 8 would not be breached by the removal. The appeal was therefore dismissed on all grounds.

The grounds of appeal and grant of permission

6. The grounds seek primarily to attack the judge's credibility findings. In addition, they assert that the judge erred in her assessment of risk on return and the best interests of the children.
7. Permission was granted by First-tier Tribunal Judge Simpson in a decision dated 8 November 2015. The two points specifically mentioned in the grant are the adequacy of Judge Nightingale's consideration of the birth certificates and the adequacy of assessment of Article 8 outside of the Rules.

The hearing before me

8. Mr Bellara relied on the grounds and submitted that the core point related to the birth certificates. He submitted that if the judge had been wrong in respect of her overall credibility assessment, including that relating to the certificates, then the Appellant's case at its highest was not bound to fail in light of the country information on women with children born out of

wedlock. In other words, if the certificates were credible the case could succeed.

9. Mr Staunton submitted the country information suggested that false documents could be obtained in India in respect of information provided for the issuance of the birth certificates in this country, and that Judge Nightingale's decision had to be looked at as a whole. There were a number of adverse credibility points made throughout the decision with adequate reasons given for the rejection of the claim.
10. By way of reply Mr Bellara reiterated his concern in respect of paragraph 62 and the treatment of the birth certificates. Although he accepted that credibility had to be looked at in the round, the birth certificates should, he submitted, have attracted significant weight.

Decision on error of law

11. In my view there are no material errors of law in the decision of Judge Nightingale.
12. I must of course look at her decision as a whole. Having done so it is clear to me that she has provided numerous clear findings of fact supported by sustainable reasons. These findings and reasons begin at paragraph 52 and run all the way through to paragraph 64. The judge has given very careful consideration to the evidence as a whole and produced what I would describe as an admirably clear and thorough decision. I note the striking fact that a large number, indeed the majority, of the findings of fact and reasons have not been challenged by the Appellant (in this respect, see paragraphs 54 and 56 to 61 of the decision). These findings and their accompanying reasons stand on their own feet, as it were, and present a very significant obstacle to the success of the appeal before me.
13. In respect of paragraph 52 of the decision, the judge was entitled to have regard to the cultural context of the claim, particularly as this very issue had been raised in questioning (see paragraphs 24 and 34): there was no "ambush" here in relation to new points being taken against the Appellant. Further, Judge Nightingale made it abundantly clear that the plausibility issue was not determinative of credibility, but only one of a number of factors. Even if there was an error, it cannot sensibly be said that this was material to the outcome, given the multiplicity of other adverse findings.
14. As regards paragraph 53, once again the judge is quiet clear: the point taken was not determinative, but another one of many, all of which were to be taken in the round.
15. Dealing with the particular issue of the birth certificates, it is clear that Judge Nightingale dealt with this issue as part of her overall credibility assessment, as she was fully entitled (indeed required) to do. She did not find the birth certificates themselves were false documents but took the view as an element of her assessment that false documents were readily available in India and it might be that such false information had been used in this country for the registration of the children. This finding was, as I said before, part and parcel of her overall assessment and cannot be

looked at in isolation. As a result of the numerous adverse findings and reasons given thereto Judge Nightingale was more than entitled to conclude that the Appellant had not given a truthful account in respect of this aspect of her claim. She was also entitled to take country information into account which indicated that false documents (or documents containing false information) could be obtained in India.

16. The children's 'status' was of course part and parcel of that claim and so their position cannot be artificially isolated from the overall assessment of the credibility. Given her eminently sustainable findings of fact contained within paragraphs 52-64, Judge Nightingale was fully entitled to find that there was no risk on return to India, whether in relation to the Appellant or the two children.
17. In respect of Article 8 it also follows that in light of her findings of fact and her perfectly lawful consideration of the claim outside of the Rules in paragraphs 67 and 68, the judge was fully entitled to conclude that removal of that family unit would not result in a violation of any protected rights.
18. In light of the above the decision of Judge Nightingale stands.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal stands.

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.

Signed

Date: 2 February 2016

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT **FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date: 2 February 2016

Deputy Upper Tribunal Judge Norton-Taylor