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Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/09183/2014

THE IMMIGRATION ACTS

At Field House
on 29th October 2015

Decision and Reasons Promulgated
On 4th January 2016

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL FARRELLY

Between

Ms S C
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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.

Representation:

For the Appellant: Ms.L.Hirst, Counsel, instructed by Fadiga and Co, Solicitors.

For the Respondent: Mr C.Avery, Home Office Presenting Officer.

DECISION AND REASONS

Introduction

1. Although it is the respondent who is appealing I will continue to refer the parties as they were in the First-tier Tribunal for the sake of convenience.
2. The appellant is a national of Bangladesh born on 31 July 1978. She was arrested on 14 August 2009 following a complaint. This led to enquiries about her immigration status whereupon she claimed asylum. She claimed she was from Dhaka where she has five brothers and four sisters, their parents being deceased. In 1993 she married a Mr Mustafa Choudhury and lived with his family in Comilla. They had two children. He was abusive and in 1995 she complained on two occasions to the police. They were unsupportive.
3. She said on 28 December 2000 she left, taking their youngest son and went to live with her brother in Dhaka. In July 2001 she flew to the United Kingdom accompanied by an agent. She used a passport which did not belong to her. She and the agent stayed in the same house but they disagreed over money. She moved into a nearby house before moving to London where she had various jobs. She was in contact with her family who told her that her husband had threatened them.

The first decision

4. Her claim was refused on 19 August 2009. The respondent questioned her credibility, raising section 8 issues and the fact she only claimed after being apprehended. The respondent did not find the Refugee Convention was engaged finding she was not part of a social group. In any event, there was sufficiency of protection available and it was reasonable to expect her to relocate within Bangladesh if there were localised difficulties. She had done this when she lived with her brother. Regarding article 8, she had no family life in the United Kingdom and any private life had been established when she was here illegally.
5. The appeal was dealt with under the fast-track procedure. It was heard by First-tier Immigration Judge Denson at Yarl's Wood on 27 August 2009 and dismissed on credibility grounds. It had been argued that the appellant had been trafficked but this was not accepted. In the alternative, if the claim were true the judge concluded there was sufficiency of protection. In RA and Other's (Particular Social Group- Women) Bangladesh [2005] UK IAT 00070 the tribunal concluded from the objective evidence there was discrimination against women but not to the extent in Pakistan and they did not form a particular social group. The judge also referred to the family support available to the appellant and the presence of non-government organisations. Regarding article 8 there was no family life established. A private life existed but her removal was proportionate.

The later claim and impugned decision.

6. The appellant was not removed but made various other representations to the respondent to remain. These were all unsuccessful and a judicial review was brought by her. The last application made was on 26 June 2014 and again resulted in a negative decision of 7 October 2014 and removal directions.
7. It was the appeal against this decision which came before First-tier Judge Beach on 21 April 2015. The claim consisted of a reassertion of the original index claim; the claim of being trafficked within the United Kingdom and of the appellant being in abusive relationships, including an unregistered religious marriage. There was also a reference to her son dying and of her having mental illness. The appeal included a report from a Prof Katona who commented on her mental state and her hospitalisation from September to October in 2014. There was also medical evidence from a Ms Kralj. There is also report from country experts, Dr Hoque he gave evidence about societal views in Bangladesh and Dr Wilson who had a particular interest in domestic violence in Bangladesh. The appeal was heard by way of submissions only. It was contended on behalf of the appellant that in Bangladesh her family no longer supported her. The presenting officer pointed out that she had nine siblings in Bangladesh; reliance was placed upon the previous decision dismissing her claim. It was argued it was sufficiency of protection and medical treatment in Bangladesh.
8. At paragraph 41 First-tier Judge Beach pointed out the starting point was the previous finding that her account lacked credibility (Para 59 of the first decision). At paragraph 49 Judge Beach found that the medical evidence was not sufficient to show the appellant had been the victim of domestic violence in Bangladesh. It was pointed out that the report writers had accepted without question the account given. The judge referred to intervening events, such as the death of the appellant's son. At paragraph 50 the judge did not accept that the appellant had been trafficked to the United Kingdom. The judge also rejected the claim of trafficking within the United Kingdom. The chronology provided referred to sex exploitation and domestic servitude but this was not consistent with the appellant's own statement. In conclusion the judge adopted the findings of the previous tribunal and found that domestic violence in Bangladesh did not occur (para 53).
9. The judge accepted that she had been in an abusive relationship in the United Kingdom but did not find this would place her at any risk on return to Bangladesh (Para 57). The judge did not accept that her

family would be unsupportive (para 58). The judge concluded she would not be at risk of persecution as a sufferer of mental health problems. Consequently, the claim under the Refugee Convention was dismissed.

10. The judge allowed the appeal on human rights grounds. The judge referred to the appellant having a complex mental health history and that she had suffered psychotic episodes. She was described as a vulnerable individual, prone towards abusive relationships as a consequence. Prof Katona provided a report on behalf of the appellant in which it was stated there was a significant and real risk she would self-harm if returned to Bangladesh. At paragraph 69 the judge states that although objectively she is not at risk in Bangladesh she has subjective fears in relation to Bangladesh which would affect your well-being. The judge referred to the medical treatment available in the United Kingdom and that she may not receive effective treatment in Bangladesh. On this basis the appeal was allowed, with the judge concluding that article 3 and article 8 were met.

The Upper Tribunal

11. Permission to appeal was sought on the basis that the decision was irrational. The judge had found the appellant's claim of events in Bangladesh untrue. She had not established ill-treatment from her husband; had not been trafficked and was not at risk from her own family (who were found to be supportive) or from Bangladesh society in general. It was perverse therefore for the judge to conclude she was at risk because of subjective fears. If the objective claim was untrue then there was no basis for a subjective fear.
12. It was argued the judge failed to follow the guidance given in J v Secretary of State for the Home Department [2005] EWCA Civ 629 and the high threshold required to satisfy article 3 on a medical basis as set out in N v United Kingdom (26565/05) 27/05/20008.
13. It was also argued that the judge was wrong in conducting a freestanding article 8 assessment without having regard to the immigration rules and whether such an assessment was justified. The judge failed to have regard to the great weight due to the Secretary of State's position in respect of immigration control enshrined in the immigration rules. In carrying out the freestanding assessment it was argued the judge failed to have adequate regard to section 117 and the public interest consideration indicated.
14. Permission was granted on the basis it was arguable the judge's findings of the risk on return were inconsistent, having rejected her claim of events in Bangladesh. Permission was also granted on the basis it was arguable the judge gave inadequate reasons as to why her removal would breach of article 8 and in particular did not engage with section 117.

15. At hearing the grounds were re argued. Both parties agreed this was an error of law found the matter should be referred back to the First-tier tribunal.

Conclusion

16. Two First-tier judges have disbelieved the appellant's claim of events in Bangladesh. The first issue presented is whether Judge Beach's conclusions are inconsistent. The judge found as an objective fact the appellant has nothing to fear on return. However, the judge concluded she had a subjective fear which would make her return breach articles 3 and 8. The respondent's contention was that there cannot be a genuine subjective fear from something a person has made up.

17. In considering the challenge I am anxious to consider the reasoning as a whole. Paragraph 69 contains the sentence:

“Although there are findings that the appellant will not be objectively at risk in Bangladesh it is clear that her mental state is not such that she would be able to take on board those findings.”

This is not a consistent statement, given the appellant's claim of events in Bangladesh was not accepted. It only makes sense if the appellant has now deluded herself into believing what she made up was true. It may be that the judge meant to convey that notwithstanding the lack of credibility she is a vulnerable individual and to return her to Bangladesh would breach article 3 and 8. The appellant's representative contends this is not a medical case but on the facts found I do not see what else it can be.

18. The judge accepted she has a complex mental health history; has suffered psychotic episodes and has been an inpatient and receives intensive support from medical professionals. The judge found it extremely unlikely she would receive the same level of support in Bangladesh. She was in abusive relationships in the United Kingdom and the judge concluded that as a vulnerable individual there was a risk of her re-entering abusive relationships. Whilst the risk would be the same in the United Kingdom or in Bangladesh, in the United Kingdom there was a backup of State support and safeguarding not available in Bangladesh.

19. Having regard to what was said in J v Secretary of State for the Home Department [2005] EWCA Civ 629 I find the judge has failed to set out adequately why her removal would meet the particularly high threshold for a breach of article 3 or 8 to occur with a naturally occurring illness. The severity of the risk and the causal connection with return are not adequately demonstrated. The decision refers to a complex mental health history and points out that medical facilities in the United Kingdom are most likely better than in Bangladesh but this is not the test. The decision refers to Prof Katona being of the opinion there is a significant and real risk she will self harm. However, the

Professor has not challenge the truth of the underlying account and this must call into question the reliability of this conclusion.

20. The leave application refers to paragraph 59 of the decision and indicates the judge was thereby indicating he was not at risk on return simply as a result of her mental health problems. In the context of the decision I take this to mean that he would not face persecution because of societal attitudes towards mental illness in Bangladesh.
21. I find that the decision focuses unduly upon the appellant and does not present a balanced approach towards the need to have immigration control. There is no reference to the immigration rules, particularly to 276 ADE or of section 117. Consideration of the latter cannot be implied from the decision.
22. In conclusion, I find that the decision does contain material errors of law and cannot stand. The reference to a subjective fear is inconsistent with the finding that the underlying claim is untrue and objectively. There is no risk of persecution. The decision does not set out adequately the causal link with removal and the severity of the consequences. Finally, the public interest considerations are not adequately set out.
23. The decision allowing the appellant's appeal on human rights grounds cannot stand. The findings of the judge in respect of the Refugee Convention are to be preserved. Those findings were that he had not demonstrated she was the victim of domestic abuse in Bangladesh; that he had not been trafficked to or within the United Kingdom and that she would not be at risk on return because of societal attitudes in Bangladesh.

Decision

24. The decision of the First tier Tribunal allowing the appeal on human rights grounds is set aside. The appeal is remitted to the First tier Tribunal for a rehearing on human rights grounds only.

Deputy Upper Tribunal Judge Farrelly

Between

Ms S C
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DIRECTIONS

1. The appeal is remitted to the First-tier Tribunal for a week hearing on human rights grounds only. The findings of Jude Beach in respect of the Refugee Convention are to be preserved. Those findings were that she had not demonstrated she was the victim of domestic abuse in Bangladesh; that she had not been trafficked to or in the United Kingdom and that she would not be at risk on return because of societal attitudes in Bangladesh towards her as a single person or someone with mental health needs.
2. An anonymity Direction is made.

Deputy Upper Tribunal Judge Farrelly