



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

Appeal Numbers: AA/06810/2015

**THE IMMIGRATION ACTS**

**Heard at Birmingham**

**On 30<sup>th</sup> January 2017**

**Decision & Reasons  
Promulgated**

**On 13<sup>th</sup> June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**BGR**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Respondent: Mr S. Vokes, Counsel instructed by TRP Solicitors

For the Appellant: Mr P. Duffy, Senior Presenting Officer

**DECISION AND REASONS**

Anonymity. The First-tier Tribunal had made an anonymity direction. That shall continue in the same terms.

1. The Appellant appeals with permission against the decision of Judge Andrew (sitting at Birmingham on 27 April 2016) whereby the Secretary of

State had refused the Appellant's protection claim. The Appellant had claimed to be at risk on return to Mexico under the Convention ground of being part of a Particular Social Group as a woman who had been raped. She feared the Police and gangs in her home country.

2. The Judge of the First-tier Tribunal had dismissed the appeal based on both protection grounds and Article 8 ECHR grounds.
3. The Appellant's grounds of appeal were lengthy but, were encapsulated at the end of paragraph 1, where it was said, "The Judge was entitled to attach less weight to the untested statement of the Appellant's husband, but it was unreasonable for her not to attach any weight whatsoever".
4. Permission to appeal was granted by First-tier Tribunal Judge Saffer. The learned Judge observed, "It is arguable that the Judge materially erred by refusing to take into account a lengthy witness statement prepared by the Appellant's husband. It is arguable that the fact that he did not give evidence does not necessarily mean that no weight should have been attached to what he had written. All grounds may be argued".
5. At the hearing before me Mr Vokes said that the Judge had even declined to consider the husband's witness statement. The problem was that the Judge had said she would give no weight to that witness statement. It was not that unusual for witnesses to give a statement but not to give evidence. Mr Vokes said it was particularly important to note that it was a 22 paged witness statement. It has to be noted too that the Appellant's account was in fact accepted. Indeed, I note that the Judge had accepted that the Appellant had been kidnapped and raped as claimed.
6. Mr Vokes made submissions that there were also other problems with the Judge's decision including in respect of Paragraph 339K of the Rules.
7. Mr Duffy in his submissions referred to the Rule 24 Reply. In summary that had said the Judge was entitled to make adverse findings as the Appellant's husband had refused to give evidence. It was also said that the Judge was not required to particularise every piece of evidence and therefore the ground was unmeritorious.
8. It was said one had to ask what was it about the Appellant's husband's witness statement which would have made a difference? What was about it which could have advanced the case further? What was material about any part, if there was to be an error? Mr Duffy said the second point was that one needed to contrast with, for example, Sri Lanka. This was a case of non-state actors. It was in respect of corrupt police and drugs gangs. The fluidity around it could not lead to the same result. He said that there was no material error of law.
9. After hearing from Mr Vokes, I had reserved my decision.

10. In my judgment there is a material error of law in the Judge's decision whereby she had said "no" weight could be attached to the Appellant's husband's witness statement. Whilst the Judge would have been entitled to conclude that the amount of weight could be "limited", it was not open to her in this case to conclude that "no" weight could be attached to the husband's evidence. This is especially so since the Judge had found the Appellant to have been largely truthful in respect of the serious sexual violence she had endured and in respect of the kidnapping. It was therefore a material error of law for the Judge to attach no weight to the witness statement.
11. The difference that the Appellant's husband's evidence could have made is that the further risks which the husband had highlighted could then have been adjudicated upon. In my judgment, it is rare that "no weight" can be given to evidence in the form of a witness statement. That is to be contrasted with "little weight" or "limited weight" being applied to evidence. It is possible, had this not been a protection claim, that Mr Duffy's submissions would have had more force, but I am of the clear view that the Judge's decision in respect of the Appellant's husband's evidence meant that she did not give the Appellant's appeal the most anxious scrutiny.
12. I conclude that the Judge's decision is flawed and cannot stand.
13. There shall be a re-hearing at the First-tier Tribunal.

### **Notice of Decision**

There was a material error of law in the First-tier Tribunal's decision.

That decision is set aside.

An anonymity direction is made.

Signed

Date: 30 January 2017

Deputy Upper Tribunal Judge Mahmood