



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

Appeal Number: PA/04014/2015

THE IMMIGRATION ACTS

**Heard at Manchester
On 11 May 2017**

**Determination Promulgated
On 12 May 2017**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**NK
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms J Sachdev (Bury Law Centre)

For the respondent: Mr A McVeety (Senior Home Office Presenting Officer)

DECISION

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. I have anonymised the appellant's name because this decision refers to her asylum claim.

Summary of asylum claim

2. The appellant is a citizen of Bangladesh. She claims that if returned to Bangladesh she faces a real risk of serious harm from family members because she entered a relationship against her family's wishes and a "video" or recording of sexual intimacies was placed on the internet. The appellant fled Bangladesh and arrived in the UK with her partner but that relationship has since broken down.

Procedural history

3. In a detailed decision dated 6 September 2016 First-tier Tribunal Judge Ransley considered the main issue in the appeal to be credibility [17]. She made a number of adverse credibility findings and dismissed the appeal.
4. Upper Tribunal Judge Grubb granted permission to appeal observing that it is arguable that the First-tier Tribunal made factual errors and erred in her approach to the sexually explicit evidence – see the CJEU decision of ABC (2015) Imm AR 404. For the purposes of this appeal the following principles can be derived from that decision:
 - (i) The methods used to assess evidence submitted in protection claims must be consistent with the provisions in Directives 2004/83 and 2005/85, and the fundamental right to respect for human dignity enshrined in Art 1 of the Charter [53];
 - (ii) The submission of films of intimate sexual acts are precluded, in so far as the production of this evidence infringes human dignity [65].
5. The SSHD submitted a rule 24 notice dated 31 January 2017 in which she submitted that the findings of fact were open to the First-tier Tribunal.

Hearing

6. Mr McVeety did not consider there to be any material error of law in relation to the principles established in ABC. Upon reflection, Mr McVeety conceded that the factual findings at [35 and 36] contained an error of law such that the decision needs to be remade completely.
7. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided that this is an appropriate case to remit to the First-tier Tribunal.

Error of law discussion

8. I can state my reasons briefly given the respondent's concession.
9. In finding the appellant not to be credible the First-tier Tribunal regarded it [36]:

“material that there is no evidence of the appellant reporting any domestic violence to the UK authorities until July 2014, shortly before she made her application in July 2014 for leave to remain under the domestic violence provisions of the immigration rules.”

10. Mr McVeety conceded that it is simply factually incorrect to state that there was no such evidence. In the appellant's witness statement dated 20 August 2014 she said this in relation to the violence she suffered from the father of her children and ex-partner:

“5. He then started to torture me mentally and physically.

6. On August 2013 due to this intolerable torture, my neighbour called an ambulance and I was taken to Royal London Hospital where they informed Tower Hamlets Children Social Services. They interviewed me and said they did not have any duty of care toward the unborn baby until it's born. They also informed my matter to the local police. I was discharged from hospital. On different occasions, they visited me at my home address to see how the pregnancy was progressing and the affect it had from domestic violence. My child [MI] was born on [] 2013 at Royal London Hospital. The Social Service took the responsibility of my child in order to protect me and my child from Mr [I] ...”

11. When the appellant's statement is read in conjunction with the letter from her social worker dated 5 August 2014 (referred to by the First-tier Tribunal at [35]), the First-tier Tribunal was incorrect to state that there was no evidence that the appellant reported domestic violence until July 2014. Her own statement says that it was reported to the hospital, social services and the police in August 2013 and they each took pro-active steps in relation to this information. This mistake of fact has caused unfairness and has had a material impact upon the First-tier Tribunal's assessment of credibility.
12. In addition to this, the First-tier Tribunal has inaccurately found a discrepancy in the appellant's evidence at [26]. The First-tier Tribunal states that at the asylum interview it was her father who took her from the hotel in Chittagong back home. This does not accurately reflect her answers at Qs 92 and 93 in which she said that “they found us at the hotel”, her uncle kicked Mr [I], her father slapped her, and “they” took her from the hotel back home. In her

rebuttal statement dated 21 July 2016, the appellant was responding to matters raised by the respondent in the refusal letter. She only referred to her uncle but did not state that he was the only one present. The discrepancy identified is therefore more apparent than real.

13. Finally, I turn to the ground of appeal relying upon ABC. It is not necessary for me to address this because Mr McVeety accepted that, without this, there is still an error of law as identified above that requires a complete re-assessment of credibility. For the sake of completeness, I address this ground briefly.
14. In my judgment, the First-tier Tribunal's finding that the appellant's "*failure to provide the video in evidence is a material consideration to be taken into account*" at [25] infringes the principle that the submission of a film of intimate sexual acts is precluded, in so far as this evidence infringes human dignity. Mr McVeety pointed out with some justification that the First-tier Tribunal was entitled to comment that the appellant was unable to provide any details, for example, a weblink, to explain how the family members were able to view the video. He emphasised that there should be no requirement to view or provide the actual video itself. It is unclear whether the First-tier Tribunal drew adverse inferences from the failure to provide a copy of the video itself or the failure to provide more information regarding the video and how it came to the attention of family members. The former interpretation is the more obvious one when the paragraph is read as a whole. I am satisfied that the First-tier Tribunal erred in law in regarding it as material that the appellant failed to provide a copy of a video containing sexually explicit material, taken without her consent, when the production of that evidence is likely to infringe human dignity, in contravention of Art 1 of the Charter.

Conclusion

15. The First-tier Tribunal has erred in law in its approach to the evidence set out above. The errors I have focussed upon are sufficiently wide-ranging and fundamental to lead me to the view that the conclusion on credibility is vitiated by errors of law and unsafe. The decision must be remade entirely and de novo.

Decision

16. The decision of the First-tier Tribunal involved the making of a material error of law. Its decision cannot stand and is set aside.
17. The appeal shall be remade by the First-tier Tribunal de novo.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date:
11 May 2017