



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01272/2018

THE IMMIGRATION ACTS

Heard at Birmingham
On 10 May 2018

Decision & Reasons Promulgated
On 5 June 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RS

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Mills, Senior Home Office Presenting Officer
For the Respondent: Mr Uddin instructed by Duncan Lewis & Co Solicitors

ERROR OF LAW FINDING AND REASONS

1. The respondent appeals with permission against a decision of First-tier Tribunal Judge Neville promulgated on 28 February 2018 in which the Judge allowed the appellant's appeal on asylum and human rights grounds.

Background

2. RS, a national of Pakistan, entered the United Kingdom on 24 March 2001 lawfully as a Tier 4 (General) Student Migrant with leave valid to 28 March 2011. A subsequent application for similar leave was refused with no right of appeal on

17 December 2012. On 3 November 2016 the respondent listed the appellant as an absconder. The appellant was encountered on 4 December 2017 during a police traffic stop when the appellant's name was "flagged" as an absconder. The appellant claimed asylum on 8 December 2017.

3. The Judge noted the basis of the claim before setting out findings and reasons from [14] of the decision under challenge.
4. The Judge was very critical of the manner in which the appellants asylum interview was conducted recording at [17 - 18] the following:

17. From the surrounding context it was plainly obvious to whom 'next-door auntie' referred. Either the interviewing officer did not know that in countries including India and Pakistan 'auntie' and 'uncle' is used as a term of respect to one's elders, which would be remarkable, or he was being disingenuous. Either way the response at q 100 is rude and confrontational, was never likely to improve the Appellant's ability to give quality answers during the interview. Nor did the Appellant ever say the neighbour took her in. The interview also suffers from answers being inaccurately summarised and then treated as propositions made by the Appellant. An example is at q36 where the Appellant is asked why she was educated, and says that a neighbour taught her at home. The interviewer asks where she learned English, and was told that it was the same neighbour. This plainly means a general education by the neighbour, and it included some English. Yet at q. 129 the interview challenges the Appellant by putting "your neighbour only taught you English and this was up to level 10". No such answers had ever been given.

18. The above is illustrative of themes that pervade the interview. The result is that any inconsistencies in the interview carried little weight against the Appellant wherever they could be explained by misunderstanding of, or confused or nervous reaction to, the interviewer's questions. An example is that at her interview at qq.77-93 she suggests her brother escaped when her father went to a three day wedding, but paragraph 25 of her witness statement says that her father was at home. This inconsistency initially appeared to me as demonstrating that the Appellant might have forgotten a detail of a fabricated account. Yet rereading the relevant part of the interview in light of my above observations I placed no weight on the inconsistency, as it is just possible that the Appellant was referring to her brother visiting an embassy for issue of the Visa rather than it being at the time he actually escaped.

5. The Judge analyses other aspects of the evidence before finding at [26]

26. Taking the evidence in the round I find that her omissions, and even potentially some misrepresentation of the facts, is still consistent with the core of her account being true. Were I working to a higher standard than the applicable reasonable likelihood, I would find that her core account is probably untrue. Yet the "positive role for certainty" in *Karanakaran* [2000] 3 All ER 449, as discussed in *KS (benefit of the doubt)* [2014] UKUT 522 (IAC), causes me to assign just enough credit to the positive indications of credibility to overcome the negative.

6. The Judge sets out material findings at [27] and applying the findings to the country guidance, and in rejecting the appellant's contention that her father will be alerted to the appellant's arrival the airport in Pakistan, finds there is no support in any of the background evidence or country guidance for the notion that a person with connections such as the appellants father will be able to have a returnee detained on arrival.

7. The Judge finds if the appellant is returned to her home area she shall be at risk of violence from her father or his family and that there would not be a sufficiency of protection from the police in that area. Thereafter the Judge considers the question of internal relocation before concluding at [30] that the appellant's previous abuse, her vulnerabilities, her emotional dependence on her brother, the lack of any financial support, male protector, or meaningful education, makes it not reasonable for her to relocate to one of the largest cities in Pakistan. Whilst accepting shelters provide short term support no long-term support is said to be available in a situation in which there is no reconciliation possible with her family. On this basis the Judge allows the appeal on asylum grounds and article 2 and 3 on the same findings and concludes there is no need to consider article 8 ECHR.
8. The Secretary of State sought permission to appeal which was granted by another judge of the First-tier Tribunal on the basis the grounds disclose arguable errors of law.

Error of law

9. The Secretary of State's grounds take issue with the findings by the Judge in relation to the manner in which the asylum interview was conducted. Mr Mills, during the course of his preparation, noted that the grounds of challenge had been drafted by the person who conducted the interview and who was specifically criticised by the Judge. This was an issue highlighted when the New Asylum Model (NAM) procedure was introduced by the respondent for assessing asylum claims more efficiently when there were concerns that a person who conducted an interview may also be asked to prepare grounds of challenge against an appellant's successful appeal.
10. It is human nature in a situation that may be deemed a personal attack for some to then lack the degree of objectivity required when assessing whether arguable grounds of challenge actually exist sufficient to warrant an onward appeal. Mr Mills has therefore prepared his consideration of the application bearing in mind this case specific fact. Having done so, Mr Mills submitted it was a matter in which permission to appeal was warranted although submitted that he could not see any basis for the Judges conclusion that the interviewing officer was confrontational and had disregarded the content of the interview.
11. Mr Mills submitted it was not clear why the Judge chose to place little weight upon the section of the asylum interview referred to at [16] of the decision under challenge. It was submitted the section is neither confrontational nor offensive in attitude and the Judge gives no reasons for making such a finding.
12. Within the NAM model a representative for the appellant is entitled to be present who can intervene in if an interview is problematic and who can ask for the interview to be stopped. The appellant's representative made no such intervention on the day. A representative can intervene to stop the interview if the manner in which it is being conducted is inappropriate, such as an interviewing officer displaying unnecessary aggression, but in this case the opportunity to object had not been taken up by either the appellant or the representative.
13. Mr Mills submitted that the Judge's conclusions are irrational and inadequately reasoned in relation to the interview.

14. In relation to the question of whether any error is material, Mr Mills submitted that the Judge finds this to be a knife edge case and therefore any error is material.
15. Mr Mills accepted that the freestanding ground pleaded in relation to *SM* did not add much to the case.
16. Mr Mills submitted the Judge found the appellant was vulnerable and not educated even though she had been educated.
17. Mr Uddin submitted the grounds did not provide adequate reasons for interfering with the decision. Ground 1 is an irrationality challenge and not adequately reasoned to undermine the findings made by the Judge. The Judge found little weight could be attached to the interview when combined with the findings made which led to the specific findings at [27] of the decision under challenge.
18. Mr Uddin submitted that even if weight had been given to inconsistencies it was up to the Judge to consider all the evidence and come to the conclusions as a whole, which the Judge did, leading to a rational decision. The First-tier Tribunal is a specialist Tribunal and its judges apply their own normative and objective standards which is what the Judge did in this case.
19. Mr Uddin submitted [20 - 22] form part of the decision which must be read as a whole, in which the Judge carefully evaluates the evidence and all factors including those in favour of the appellant and gives weight to the evidence the Judge was prepared to give. The Judge finds as a result of factors outlined in [27] the balance comes down in favour of the appellant.
20. Mr Uddin submitted the issue of irrationality had not been made out on the basis of the Secretary of State's challenge.
21. The Judge dealt with the health issues raised by the appellant and found against the appellant. Mr Uddin submitted this does therefore not give rise to any arguable legal error.
22. Mr Uddin accepted that the more detail could have been given but submitted this is not required to test.
23. In relation to *SM*, the Judge assessed the evidence and the guidance set out in the case law giving rise to no arguable legal error. It was submitted this is not a knife edge decision but a nuanced decision and even if problems did exist in the Judges comment they were not sufficient to amount to a material error.

Discussion

24. Mr Mills was correct to identify the issues surrounding the practice of an interviewing officer also drafting grounds of appeal as part of the New Asylum Model, especially in a case where that same person is the subject to criticism by a judge. It would better practice in such a case for the papers to be referred to another individual of higher standing who could give objective consideration to whether such criticism is justified and/or whether grounds exist that warrant a challenge by way of appeal to the Upper Tribunal.
25. That did not happen in this case but Mr Mills examine the merits objectively leading to the submissions referred to above.
26. The first finding I make is that although the Judge is critical of the interviewing officer, in the manner in which the interview was conducted, I do not find that a

reading of the interview or the determination supports such a view. The Judge fails to set out in sufficient detail what factors led to such an attack especially as there was no indication that the appellants representative who was present at the interview thought there was anything to justify intervention during the interview process. I do not find anything established in the decision under challenge to warrant no weight being given to the interview.

27. This is a case, however, where the Judge clearly considers that evidence as there is specific reference to it in the decision under challenge; together with all the other evidence put before the Judge. The Judge notes points for and against the appellant and it is not made out the findings set out at [27] were not available to the Judge on the evidence considered as a whole, irrespective of the inadequately reasoned challenge to the interviewing officer.
28. The Judge applied those findings to the country guidance and again at [28] rejects one aspect of the appellant's case.
29. It is at [29- 30] the Judge sets out the fact that if the appellant is returned to her home area she will be at risk of violence from her father or his family which has not been shown not to be a finding within the range of those reasonably open to the Judge on the evidence. The Judge thereafter considers whether it is reasonable for the appellant to internally relocate in Pakistan concluding, for the reasons set out, that it would not.
30. As Mr Uddin submitted, it has not been established that this is a finding outside the range of those reasonably available to the Judge on the evidence such that the finding could be said to be irrational. I agree. Whilst the Judge can be criticised for certain aspects of the decision it has not been made out that the decision under challenge, to allow the appeal, is infected by arguable legal error sufficiently material to warrant the Upper Tribunal interfering in this decision. It does not matter that some judges may not have come to the same conclusion as that is not the correct test.

Decision

31. **There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

32. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 4 June 2018