



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

Appeal Number: PA/01299/2017

**THE IMMIGRATION ACTS**

**Heard at Eagle Building, Glasgow  
On 5<sup>th</sup> January 2018**

**Determination Promulgated  
On 24<sup>th</sup> January 2018**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**[R S]**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Winter instructed by Katani & Co Solicitors

For the Respondent: Ms R Petterson, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The applicant made a human rights and international protection claim. Both claims were refused by the respondent for reasons set out in a letter dated 25 January 2017. She appealed. Her appeal was dismissed by First-tier Tribunal Judge Clapham SSC in a decision promulgated on 20<sup>th</sup> June 2017. Her husband had made a claim for international protection as her dependant and been refused as such. He does not have an outstanding an appeal.
2. The basis of her claim is that she and her husband are cousins and had a romantic relationship from February 2000. She was told by her family to cease

the relationship but they kept in touch. She claimed that at the end of 2003 she was informed by her family that she had to marry a Mr [T]. She refused and fled with her husband; they married. In 2005, she states that her older brother found out where they were and her husband was threatened and assaulted and he was told to divorce her. Her husband was a journalist and could, she said, be traced through that employment and she would therefore be traced by her family, even if they moved to another part of Bangladesh. She and her husband came to the UK in 2006 and she applied for asylum in July 2016.

3. Before the First-tier Tribunal Judge, discrepancies over the date of the marriage were identified. The appellant said she and her husband had married in 2004 whereas the record of her husband's interview for their visa in 2006 records that he said they were married on 14<sup>th</sup> July 2002. In oral evidence to the First-tier Tribunal judge he said he could not recall what he said at that interview but that they had married on 5<sup>th</sup> January 2004. She said they had taken the marriage certificate, which shows a marriage in 2004, to the British Embassy. The First-tier Tribunal Judge refers in his decision to both the appellant and her husband not answering questions that are put to them; for example, that she did not provide an explanation why her husband had given a year of marriage as 2002 when interviewed in 2006.
4. Further matters relied upon by the appellant were that her family would be able to trace her through her husband's employment, that they had a young child (born 26 August 2014 in the UK) who would be abducted and that the police would not protect her or her family.
5. The judge found that the delay in claiming asylum carried considerable weight and had she "genuinely believed herself to be at risk then an asylum application would have been made immediately" and that "the reason for the delay in claiming asylum was that the Appellant did not have a genuine or well-founded fear of persecution." The judge then made further findings that the account given by the appellant and her husband was "simply not credible", "no explanation was provided as to why the husband said at interview that the date of marriage had been 14 July 2002", as a journalist her husband could "no doubt adopt a pseudonym".
6. Permission to appeal was sought on the grounds that the First-tier Tribunal judge had failed to give adequate reasons for the credibility findings; commencing the credibility assessment with a weighty adverse finding under s8 Asylum & Immigration (Treatment of Claimants etc) Act 2004 rather than considering the evidence as a whole; failing to take into account that the respondent had failed to undertake checks on a verifiable document namely the marriage certificate, erred in finding the appellant's husband could use an assumed name and thus the couple could avoid being traced and failed to undertake any assessment of the best interest of the child.
7. Permission was granted in general terms on all grounds.
8. There is no error of law in the assertion that the judge failed to consider that there had been no independent verification of the marriage certificate. There is

no duty on the respondent to undertake such verification for documents such as those which are relied upon by the appellant. The judge did fail to take any findings on the best interest of the child although, given his findings that the family were not at risk of being persecuted if returned to Bangladesh it is hard to see how the outcome of the Article 8 claim could have been any different. That the police are alleged to be complicit in rape and abduction, as claimed by the appellant, is not on the evidence sustainable and the finding to that effect does not amount to an error of law.

9. The judge has however erred significantly in the weight placed upon the delay in claiming asylum with the dismissal of the protection claim being essentially predicated upon that delay rather than any proper assessment of the claim. Furthermore, although the appellant is now nearly 38, married and has a child and thus it may well be reasonable to conclude that the man she was supposed to marry may no longer be interested, there was no consideration by the judge of the consequences to her of having failed to comply with her family's wishes (if they are proved to the relevant standard of proof), a matter which is separate to whether she would now be forced to marry Mr [T]. In so far as her husband could be expected to utilise a pseudonym, no sustainable reason is given why that is acceptable to avoid being traced.
10. I am therefore satisfied that the First-tier Tribunal judge erred in law in his findings that the appellant is not at risk of being persecuted for a Convention reason if removed to Bangladesh. I set aside the decision to be remade.
11. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. Primary findings of fact are required on the protection claim and such findings may have an impact on any assessment of the best interest of the child and thus the human rights claim. I conclude that the decision should be remitted to a First-tier Tribunal judge to determine the appeal, no findings preserved.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit the hearing of the appeal to a First-tier Tribunal judge, no findings preserved.



Date 22<sup>nd</sup> January 2018

Upper Tribunal Judge Coker