



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05119/2018

THE IMMIGRATION ACTS

Heard at Field House
On 13 August 2018

Decision & Reasons Promulgated
On 05 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

KK (PAKISTAN)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Glass, Counsel instructed by MYM Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals on grounds of alleged procedural unfairness from the decision of the First-tier Tribunal dismissing her appeal against the refusal of her protection and human rights claims, which she advanced after entering the United Kingdom as a family visitor. The First-tier Tribunal made an anonymity direction in the appellant's favour, and I consider that it is appropriate that she continues to enjoy anonymity for these proceedings in the Upper Tribunal.

Relevant Background

2. As summarised in the refusal letter of 28 March 2018, the appellant's claim was that she had been born and brought up in Pakistan where she had met her husband. They have moved to Saudi Arabia together for 15 years, and she had given birth to their children. They were raised as Sunni Muslims, following the same faith as her, whereas her husband was a strict Shia Muslim. She was physically abused by her husband in Saudi Arabia and on return to Pakistan her husband had attempted to change the faith of her daughters in order for their eldest daughter to marry a Shia Muslim in a ceremony arranged by him.
3. She and her husband worked in real estate and they had operated a successful real estate business together. However, latterly her husband had forced her to buy and sell properties in order to enable him to buy drugs.
4. She had come to the UK for a genuine family visit with her children, and not to escape her abusive husband. However, following her arrival in the UK, she had received threatening text messages from her husband stating that he would kill her as she had failed to return to sell a property for him that was in her name. She feared returning to Pakistan as her husband would kill her because she had not returned to sell this property, and she also feared the police because her husband had lodged a *hadood* against her.
5. The appellant arrived in the UK on 1 June 2017 with her two youngest children, and on 27 September 2017 she claimed asylum, with her two youngest children as her dependants. She was given a screening interview on that day, and she attended a substantive asylum interview on 14 February 2018.
6. A legal representative from M-R Solicitors was present at the screening interview, and the same firm of solicitors was still acting for her at the time of her asylum interview on 14 February 2018. M-R Solicitors lodged a notice of appeal in mid-April 2018 against the refusal decision. They also settled the grounds of appeal.
7. On 19 April 2018 the Tribunal issued directions to the appellant and to her legal representatives, and also notified them of the dates of the pre-hearing review and substantive hearing. The appellant and her legal representatives were informed that the pre-hearing review of her appeal would take place on 4 May 2018, and that the full hearing would take place in Birmingham on 18 May 2018. The direction was that the appellant or her representative should complete the accompanying reply notice and return it to the Tribunal in Birmingham by 2 May 2018.
8. M-R Solicitors duly completed the forms for the pre-hearing review and submitted them under cover of a faxed letter of 4 May 2018. On the same day, a further notice was sent to the appellant's representatives confirming the final hearing date of 18 May 2018.
9. The appellant wrote a typed letter to the Tribunal on 13 May 2018, which is stamped as having been received on 15 May 2018, requesting an adjournment. In her letter she

said that her solicitor was unable to attend and that she would be unable to defend herself without a solicitor.

10. The application was considered on 16 May 2018 and a response was sent by first-class letter and fax to the appellant's solicitors. The application was refused as the appellant had not stated why her solicitor could not attend, and the solicitors had not informed the Tribunal that they could not attend. In the meantime, the appellant's solicitors apparently sent a fax to the Tribunal at Leicester on 15 May 2018 to the effect that they were no longer acting for the appellant.

The Hearing Before, and the Decision of, the First-tier Tribunal

11. The appellant's appeal came before Judge Parkes, sitting at Birmingham on 18 May 2018. There was no appearance by the appellant, but there was an appearance on behalf of the respondent by a Presenting Officer.
12. In his subsequent decision, Judge Parkes gave his reasons for proceeding to hear the appeal in the appellant's absence. He reviewed the procedural history at paragraphs [7] to [9]. At paragraph [10], he observed that there was no communication from the appellant either by fax or phone to explain her absence and to renew the request for an adjournment. He continued: *"Having regard to the listing history and the fact that the appellant's application had been made in September 2017, I took the view that the appellant had had sufficient time to prepare the appeal and sufficient notice of the hearing to obtain representation. The appellant's application to adjourn was made at short notice, but she could not have expected the adjournment to be granted as a matter of course and the refusal would have been served before the hearing itself. In the circumstances, I was satisfied that the appellant had had sufficient opportunity to prepare for the hearing, to attend if she wished or to have contacted the Tribunal in the event of matters beyond her control. I was satisfied that I could continue with the appeal fairly and at 2pm heard very brief submissions from the Home Office."*
13. The Judge went on to give his reasons for finding that the evidence provided in support of the core claim - which comprised scanned text messages purportedly exchanged between husband and wife and photographs of alleged injuries sustained by the appellant at her husband's hands - was not sufficient to discharge the burden of proof in the context of an account which was inconsistent in many material respects.

The Grounds of Appeal to the Upper Tribunal

14. For the purposes of an appeal to the Upper Tribunal, the appellant instructed a new firm of solicitors who engaged Counsel to settle the grounds of appeal. She pleaded that the refusal to adjourn the hearing and to proceed in the appellant's absence was procedurally unfair and contrary to the principles laid down in **Nwaigwe (Adjournment: fairness) [2014] UKUT 418 (IAC)**. The Judge's finding that the appellant had had sufficient notice of the hearing to obtain representation ignored the fact that she had previously been represented, and it was not until 15 May 2018 that her former representatives had come off the record. Accordingly, she had had only two full working days to obtain new representation. Further, the Judge had failed to

consider that the appellant was presenting a protection claim. Without wishing to appear flippant, the issues in the case involved risk to life and this ought to have elevated the need for representation at the hearing far beyond a human rights claim/EEA claim where the same risk considerations did not apply.

15. The Judge had heard nothing from the appellant which would have allowed him to proceed in her absence. He had noted, at paragraph [20], that this was a decision where no further documents had been provided in support of the appeal. Whether this was the fault of a previous representative or otherwise, it cannot rationally have been considered fair to proceed in the context of the chronology. Further, it appeared, from paragraph [28] of the decision that the Judge did not even have a full set of papers as to the evidence that had been placed before the Secretary of State.

The Reasons for the Grant of Permission to Appeal

16. On 2 July 2018 First-tier Tribunal Judge Mailer granted permission to appeal as it was arguable, in his view, that there may have been procedural unfairness in circumstances where the appellant had in fact only two days in which to obtain new representatives, and in addition, the Judge did not have a full set of papers as to the evidence that was before the respondent. He continued: *“However, the appellant would need to explain why she had not attended the hearing nor seek an adjournment. She would also be expected to explain why the solicitor withdrew on 15 May 2018 and what further steps she then took to find new solicitors.”*

The Error of Law Hearing

17. As a consequence of Judge Mailer’s direction, the appellant’s solicitors requested an Urdu Interpreter to be present at the hearing. Regrettably, they did not take the parallel step of taking a witness statement from the appellant, so that she could give a considered response to the questions which Judge Mailer identified as needing to be answered. So I invited Ms Glass to examine the appellant in chief, which she did at some length and not without some difficulty. The appellant was briefly examined by Mr Clarke, and she also answered questions for clarification purposes from me.
18. She initially said that she had paid M-R solicitors the money they required, but that they had let her down by not telling her when the appeal was due to take place. But she later said that she had gone to see the solicitors after she got the notice of hearing, and they had said that she should pay them some money or they would not do anything.
19. She was questioned about the letter of 13 May 2018. She said that her uncle had typed the letter on her behalf. She had signed it. She was asked why she had said that her solicitor was *“unable”* to attend the forthcoming hearing. She initially answered that she did not have the financial means to travel to the hearing centre in Birmingham, as it was two hours away from where she was living in Buckingham. She later said that the solicitor was unable to attend because he was refusing to attend due to not being put in funds. She had told the solicitor that she had no money, and she wanted to apply for legal aid.

20. She was asked why she had not turned up at the hearing. She answered that she did not have the money to travel to the hearing or to pay a lawyer to represent her at the hearing. She had subsequently got money from her cousin with whom she was living at the time, and from her uncle, in order to pay for a new set of lawyers to lodge an appeal to the Upper Tribunal.

Discussion

21. I do not consider that the appellant has given a satisfactory explanation for not attending the hearing on 18 May 2018, or for not continuing to be assisted by legal representation from M-R Solicitors up to and including the date of the hearing. In so far as it is material, the appellant has not shown that she was let down by M-R Solicitors, as is implied in the grounds of appeal settled by Counsel. On the information that was available to Judge Parkes, I consider that his decision to proceed with the hearing in the appellant's absence was entirely reasonable and in accordance with the overriding objective.
22. However, the highly confused nature of the appellant's evidence before me tends to support the submission of Ms Glass that she is a vulnerable adult. The situation she found herself in the immediate build-up to the hearing in the First-tier Tribunal may have been brought about by poor decision-making on her part and/or the family members in the UK who were supporting her at the time, but the upshot was that she became a litigant in person. Her vulnerability would not have been apparent to Judge Parkes, and so no criticism attaches to him. However, given her vulnerability and her loss of legal representation, it is credible that the appellant did not appreciate that she needed to do more to ensure that the hearing was adjourned so as to enable her to obtain new legal representation.
23. Accordingly, given the nature of the claim and the fact that its fair resolution largely turns on an assessment of the appellant's credibility, I am persuaded that the appellant was deprived of a fair hearing in the First-tier Tribunal, as Mr Clarke conceded.
24. I am reinforced in this finding by the Judge's comment at paragraph [28] of his decision that he could not find the scanned text messages which the appellant had provided to the respondent in support of her asylum claim. As they constitute the main documentary proof relied upon by the appellant as showing that her husband is abusive and violent, and has made threats against her life, the fact that the First-tier Tribunal Judge did not have the opportunity to evaluate their contents means that there was not a full and rounded judicial assessment of all the then available evidence bearing upon the credibility of the core claim.

Notice of Decision

The hearing in the First-tier Tribunal was in retrospect procedurally unfair, and so the decision of the First-tier Tribunal is set aside on error of law grounds.

Directions

As directed at the hearing, this appeal is remitted to the First-tier Tribunal for a fresh hearing, with none of the findings of fact made by the previous Tribunal being preserved.

Direction Regarding Anonymity - rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 26 August 2018

Deputy Upper Tribunal Judge Monson