



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05844/2016

THE IMMIGRATION ACTS

Heard at: Columbus House, Newport
On: 13 August 2018

Decision & Reasons Promulgated
On: 06 September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CB

(anonymity direction made)

Respondent

Representation

For the Appellant: Mr D Mills, Home Office Presenting Officer

For the Respondent: Mr A Joseph, Counsel instructed by Duncan Lewis & Co

DECISION AND REASONS

1. I make an anonymity direction under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in order to protect the anonymity of the Respondent who claims asylum. This direction prohibits the disclosure directly or indirectly (including by the parties) of the identity of the Respondent. Any disclosure and breach of this direction may amount to a contempt of court. This direction shall remain in force unless revoked or varied by a Tribunal or Court.

2. This is an appeal against the decision of First-tier Tribunal Judge Boyes in which he allowed the appeal of the Respondent, a citizen of Bangladesh, against the Secretary of State's decision to refuse asylum and issue removal directions.
3. The application under appeal was refused on 20 May 2016. The Respondent exercised her right of appeal to the First-tier Tribunal. The appeal came before Judge Mathews on 17 November 2016 and was dismissed. The Respondent appealed with permission to the Upper Tribunal against Judge Mathews' decision and her appeal was allowed by Upper Tribunal Grubb on 24 August 2017 and remitted for hearing to the First-tier Tribunal. This is the appeal which came before Judge Boyes on 20 November 2017 and was allowed. The Secretary of State applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge N J Bennett on 13 December 2017 in the following terms

"I grant permission to appeal on all grounds and, in particular, on the grounds mentioned in paragraphs 2 and 4 of the application because it is arguable that the judge materially erred by failing to mention, let alone deal with, these matters."

Background

4. The history of this appeal is detailed above. The Respondent is a citizen of Bangladesh born on 20 April 1985. She arrived in the United Kingdom on 11 February 2010 as a visitor with a visa expiring on 27 July 2010. On 21 December 2015 the Respondent claimed asylum. The basis of her claim was that whilst in the UK she had been forced to marry a man in an Islamic ceremony. The marriage was not a happy one and after about 6 months her husband took her to her sister's house and abandoned her. In 2012 her uncle arranged a divorce. Because of this her husband's brothers threatened her saying that she has dishonoured their family. Having been abandoned by her husband the Respondent's uncle, with whom she had gone to live, became physically and verbally abusive to her. The Respondent complained to the police and her uncle was convicted of false imprisonment. Her uncle's sons have threatened her for taking part in the prosecution of their father and told her that they will take revenge upon her if she returns to Bangladesh. She also fears her husband's family on return to Bangladesh.
5. The Secretary of State did not accept that the Respondent had given a credible account and refused her application. At the appeal the Respondent was represented by counsel and gave oral evidence. The Judge allowed her appeal finding the Respondent to be a credible witness and taking account of the expert evidence submitted on her behalf concluded that it would be unsafe for her to return to Bangladesh.

Submissions

6. At the hearing before me Mr Mills appeared for the Appellant and Mr Joseph for the Respondent.

7. For the Appellant Mr Mills said that there were essentially three points raised in the grounds of appeal at paragraphs 2, 3 and 4. Firstly, the Judge does not mention section 8 of the 2004 act, secondly, he does not give reasons for preferring the evidence of the expert and thirdly he does not take account of the Respondent's level of education and previous employment when considering internal relocation. It is a poorly drafted and brief decision giving very little in the way of reasoning however it is, Mr Mills said, difficult to argue that the errors asserted are all material. So far as section 8 is concerned it is clear that the Respondent claimed asylum shortly after the arrest of her uncle so it cannot properly be said that she waited four years before making a claim. So far as sufficiency of protection in Bangladesh is concerned Mr Mills said that he had only seen the expert's report this morning but having read it it is clear that this is a detailed and properly sourced report from a recognised expert. If the Judge had gone into it in detail is unlikely that it would have made any difference to his decision. So far as internal relocation is concerned the Respondent may be reasonably well educated and middle-class but it is her ability to relocate that should be the issue. The fact that she had previously worked as a teacher and could support herself in Bangladesh is a narrow argument.
8. For the Respondent Mr Joseph agreed with Mr Mills submissions so far as section 8 and the expert's report was concerned. Dealing with internal relocation the interview record shows at questions 20 to 25 that the Respondent has no teaching qualification. She has an intermediate qualification in commerce and she worked in a kindergarten for two years between 2007 and 2009. The question when considering the reasonableness of relocation is whether she would be able to obtain employment and sustain herself away from her home area. The Home Office Country Information and Guidance on Women in Bangladesh refers, at paragraph 1.3.6 to the discrimination faced by women in employment. The psychiatric report submitted to the First-tier Tribunal and briefly referred to at paragraph 24 of the decision shows that she is suffering from moderate to severe PTSD and depression. It is clear that she would have difficulty in finding and maintaining employment therefore securing access to a livelihood. She will be returning with no home, no support from her family and no male protection. She would not have the wherewithal to become independent. Any error of law by the Judge in considering relocation is not material to the decision to allow the appeal.
9. I reserved my decision.

Decision

10. The grounds of appeal to the Upper Tribunal raise three issues and I will deal with them in turn.
11. Firstly, it is asserted that the Judge failed to have regard to section 8 of the 2004 act when assessing credibility despite this being referred to in the refusal letter. There was a four-year delay in claiming asylum and this should have had an adverse effect on the appellant's credibility. For this reason, the decision is fatally flawed.

12. It is correct that the Judge has failed to mention and apparently failed to consider section 8 and it is more than arguable that the issue having been raised in the refusal letter that this failure is an error of law. However, as Mr Mills very fairly pointed out the facts do not support the Secretary of State's assertion of a four-year delay. Although the Respondent did not claim asylum until more than four years after her arrival in the United Kingdom the incident that predicated her claim was the arrest and imprisonment of her uncle and the threats that she received as a result. She made her claim shortly after this. In these circumstances section 8, despite being raised in the refusal letter, was not properly applicable. Any error of law on the part of the First-tier Tribunal Judge could not therefore be said to be material.
13. Secondly it is asserted that despite a wealth of evidence being relied upon by the Secretary of State to the effect that there was a sufficiency of protection for the Respondent in Bangladesh the Judge preferred the evidence of the expert and gives no reason for doing so.
14. It is correct that the Judge very simply states, at paragraph 23 of his decision, that whilst acknowledging the evidence put forward by the Home Office he prefers the opinion of the expert "in relation to the policing and the insufficiency of protection for the appellant". However, prior to this, at paragraph 21, the Judge accepts the report of the expert Dr Ashraf Ul Haque "in its entirety" and whilst not giving detailed reasons does add that he accepts "his expertise".
15. There can be no doubt that there is a paucity of reasoning for accepting the evidence of the expert over the evidence put forward by the Secretary of State. There is no analysis of the Secretary of State's evidence and no comparison of that evidence with the expert report. Nevertheless, Mr Mills fairly acknowledges that this was a detailed and properly sourced report by an acknowledged expert. Mr Mills went so far as to say that if the Judge had gone into it in detail is unlikely that it would have made any difference to his decision. Having considered that report I am satisfied that the concession by Mr Mills was properly made. The concluding remarks at paragraphs 47 to 50 of the report make it clear that in the opinion of the expert the Respondent will face a serious risk to health and security along with ostracisation from society and will not be protected by the police and will not be reasonably able to avail herself of support from specialist services. This is a powerful and well sourced report dealing very specifically with the issues that would be faced by a lone divorced woman forced to establish a home and a livelihood away from her home area with no family support or alternative male protection. In these circumstances any error of law in the failure to give reasons for preferring the expert evidence is not material.
16. Finally, it is asserted that when dealing with internal relocation the Judge fails to consider that the Respondent has previously worked as a teacher in Bangladesh and could support herself there.
17. Again, the Judge's reasoning, at paragraph 24 of his decision, is exceptionally brief and it does not mention the Respondent's educational situation or her previous employment. However, it does pick up the other salient points being that she is a lone

female, has no money no home and no male support. It also notes that she has mental health problems. The evidence of the expert is mentioned.

18. Whereas there is no analysis it is clear that the Judge's conclusion is heavily reliant on the conclusions of the expert. As Mr Joseph pointed out the Respondent is not a qualified teacher merely someone who has worked in a kindergarten. It cannot in my judgement be fairly said that if the Judge had taken the Respondent's qualification in commerce and her work experience in a kindergarten into account that his conclusion would have been any different. In considering internal relocation the Judge is required to consider whether it would be unreasonable or unduly harsh to expect that a person should relocate having found that that person faces a risk of persecution in his or her home area. In my judgement taking into account the facts as found by the Judge and the expert evidence it would for the reasons given be unreasonable to require the Respondent to relocate. Once more any error of law that may exist through a failure to give adequate reasons is not material to the decision to allow the appeal.

Summary

19. The decision of the First-tier Tribunal did not involve the making of a material error of law. I dismiss the appeal of the Secretary of State. The decision of the First-tier Tribunal stands.

Signed:

Date: 15 August 2018

A handwritten signature in black ink, appearing to read 'J F W Phillips', written in a cursive style.

J F W Phillips
Deputy Judge of the Upper Tribunal