



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01979/2018

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre
On 3rd September 2019

Decision & Reasons Promulgated
On 12th September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MISS H V
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Islam (Solicitor)

For the Respondent: Mr D Mills (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Anthony, promulgated on 25th March 2019, following a hearing at Birmingham on 15th March 2019. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Vietnam, born on 26th September 1987, and is a female. She appealed against the decision of the Respondent dated 30th January 2018, refusing her claim for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

The Appellant's Claim

3. The essence of the Appellant's claim is that she was a victim of modern slavery, although this was rejected by the Competent Authority on a balance of probabilities, and that she had been subject to forced prostitution. If she was returned back to Vietnam she would be subject to ill-treatment again and that this would also entail the violation of her Article 2 and 3 rights.

The Judge's Decision

4. The judge set out the expert report from the Helen Bamber Foundation, prepared by Dr S Unigwe, right at the outset of the determination (at paragraphs 11 to 16) together with other evidence that was put before the judge, before concluding that the Appellant's claim was not a credible one, and that she would not be at risk on return. The judge also had regard to the fact that the Appellant was now in a relationship with a British citizen, and was pregnant. The judge observed that, "I accept that their preference is for the Appellant and their unborn baby to live in the UK. However, I find that Article 8 allows for the right to respect for one's family and private life but not where one conducts one's family life" (paragraph 52).
5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge's conclusions are perverse and irrational and had regard to immaterial factors. In particular, the judge had taken the wrong approach to the medical evidence of Dr Unigwe, prepared by the Helen Bamber Foundation.
7. On 24th April 2019, permission to appeal was granted by the Tribunal on the basis that it was arguable that the judge's assessment of credibility was flawed as the judge reaches a conclusion that the Appellant is not credible, before taking the medical evidence into account. Secondly, the assessment is not conducted in the round taking into account all the relevant evidence before reaching a conclusion.

Submissions

8. At the hearing before me, Mr Islam, appearing on behalf of the Appellant, relied upon the grounds of application. He submitted that the Appellant, who was seated at the back of the courtroom with her British citizen husband, was now due to give birth to their child in four weeks time.

9. For his part, Mr Mills submitted that it was not the case that the judge had formed a view on credibility prior to looking at the expert evidence as such. The judge had made constant references to the expert report by Dr Unigwe at every part of the decision and the conclusions on those that were open to the judge. Second, it was open to the Appellant to now make an Article 8 application. There had never been an Article 8 application. She could do so on the basis that she was married to a British citizen, and pregnant with his child. If the British citizen could show that he was gainfully employed and the Appellant could then meet the Rules, the application would be successful.

Error of Law

10. I am satisfied that the making of the decision by the judge did involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set the decision aside and re-make it. My reasons are as follows.
11. First, it is not the case at all, as the grant of permission suggests, that the judge has made a credibility finding first, and then only thereafter taken the medical evidence into account, this is not so. The judge at the outset sets out the medical evidence. However, it is arguable that the analysis of that medical evidence is somewhat partial. For example, the judge states, in relation to Dr Unigwe's report that, "I find that the cause of the PTSD symptoms will very much depend on whether I accept the Appellant's account regarding her forced prostitution" (paragraph 13). It is arguable that the judge did not necessarily have a free hand in so doing because regard had to be had to what the expert had to say about the cause of the PTSD symptoms. This is not least because the judge then did also go on to say (at paragraph 14) that at least one of the scars that the Appellant had referred to could be attributed "to trauma caused by gangsters as the lesion on her left foot/ankle (identified as S11 on the report). Dr Unigwe states that the S11 was highly consistent with its attribution" (at paragraph 14).
12. Second, however, and much more importantly, the judge's conclusions in relation to the PTSD are unclear and contradictory. Whereas it is the case that the judge at the outset refers to "the PTSD symptoms" (paragraph 13), she subsequently goes on to actually disbelieve the existence of the PTSD symptoms. She goes on to say (at paragraph 30) that,

"I do not accept that the Appellant suffers from PTSD symptoms. I find from Dr Unigwe's report that the diagnosis of PTSD is based on the Appellant's own self-reporting of symptoms and self-reporting of lifelong history of repeated abuse and severe trauma" (paragraph 30).
13. In the same way, the judge then contradicts herself again by going on to say that, "whilst I accept Dr Unigwe's diagnosis that the Appellant has symptoms of depression, I find that her mental health condition is not caused by events she has asserted ..." (paragraph 40). This is at variance with Dr Unigwe's very clear conclusion that "Miss Vu has post-traumatic stress disorder, which is very likely a result of the traumas listed above. She also fulfils the criteria for depression" (see

paragraph 189 (at page 19 of his report, dated 11th March 2019)). Dr Unigwe also goes on to say that the Appellant's "account of trauma is clinically plausible" on the basis of his own formal examination of her (paragraph 190). He further concludes that "if a decision is made for her to return to Vietnam that risk [of self-harm] will increase significantly to the point where a suicide attempt would be a real possibility ..." (paragraph 192). The fact that Dr Unigwe has come to such a clear and conclusive analysis means that the judge's own conclusions with respect to the matters that he has referred to needed to be a lot more unambiguously stated and properly reasoned.

14. It is well established that an expert is entitled to come to conclusions that are within "the spectrum of views which could reasonably be held" (see Mibanga [2005] EWHC 367). Whilst it is the case that experts do not decide cases but judges do, the judge must have a sound basis upon which to reject an expert report (see M-W [2010] EWCA Civ 12 per Wall LJ at paragraph 39).
15. For all these reasons, this appeal needs to be remitted back to the First-tier Tribunal to be determined by a judge other than Judge Anthony.

Notice of Decision

16. The decision of the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision of the original judge. I re-make the decision as follows. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Anthony pursuant to Practice Statement 7.2(b) of the Practice Directions.
17. An anonymity direction is made.
18. This appeal is allowed.

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 her 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

Deputy Upper Tribunal Judge Juss

10th September 2019