Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03622/2019 (P)

<u>THE IMMIGRATION ACTS</u>

Determined without a hearing pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Decision & Reasons Promulgated
On 24 May 2021

Before

UPPER TRIBUNAL JUDGE BLUM

Between

FK
(ANONYMITY DIRECTION MADE)

<u>Appellant</u>

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

<u>Respondent</u>

<u>Representation</u>:

For the Appellant: Grounds of appeal by Mr S Galliver-Andrew, counsel, instructed by Migrant Law Project (Cardiff)
For the Respondent: Rule 24 Response authored by Ms R Pettersen, Senior Home Office Presenting Officer

<u>DECISION AND REASONS (P)</u>

1. This is an 'error of law' decision determined without a hearing pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008, paragraph 4 of the Practice Direction made by the Senior President of Tribunals: *Pilot Practice Direction: Contingency arrangements in the First-tier Tribunal and the Upper Tribunal* on 19 March 2020, and the Presidential Guidance Note No 1 2020:

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Arrangements During the Covid-19 Pandemic, as amended on 19 November 2020.

2. The appellant appeals against the decision of Judge of the First-tier Tribunal Suffield-Thompson ("the judge") who, in a decision promulgated on 11 November 2019 (although amended on 13 March 2020 under rule 31 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014), dismissed her appeal against a decision by the respondent dated 28 March 2019 refusing her asylum claim (although granting her Discretionary Leave to Remain).

3. The appellant, a national of the Ivory Coast, claims to have arrived in the UK on 2 October 2017 and made her asylum claim the following day. The appellant claimed to be at risk of persecution as a result of domestic abuse and of gender-based violence if returned as a lone woman. She feared in particular her husband and her father. Because no marriage certificate was provided and because the appellant had only limited knowledge about her husband the respondent did not accept that the appellant had been legally married or that she faced any risk of ill treatment. The respondent considered that the appellant could obtain a sufficiency of protection from the state authorities or that she could internally relocate. The appellant appealed the respondent's decision to the First-tier Tribunal pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002.

4. The judge had before her a bundle of documents prepared by the appellant's representatives that contained, *inter-alia*, two witness statements from the appellant, a medico-legal report from Dr T Longman, a psychiatric report by Dr A Battersby, medical and social services evidence relating to the appellant's child (who has spina bifida) and an country expert report on domestic violence. The judge indicated that she treated the appellant as a vulnerable witness and heard oral evidence from her.

5. At [26] the judge indicated that the "key disputed matter" was the appellant's credibility, and at [28] the judge set out the areas of dispute that included whether the appellant had a subjective fear of her husband and father, and whether she was afraid that her daughter would be subjected to FGM. At [29] the judge again found that the case depended on whether the appellant was credible.

6. At [30] and [31] the judge drew adverse inferences based on what she considered to be inconsistent evidence relating to police summons (whether the appellant had given her husband the summons) and whether she had gone to the police after being beaten by her husband. At [32] the judge did not accept that the vague information given by the appellant relating to her husband was consistent with her level of education given that she had been married to him for 2 ½ years. The judge found that the appellant could have complained to the

police about her husband's polygamy [33] and she rejected the appellant's evidence that her father would find her given that the appellant's oldest child, who was living with a friend in a village, had not been located [34].

7. At [37] to [39] the judge considered the psychiatric report of Dr Battersby and accepted that Dr Battersby was an expert for the purposes of the proceedings. The judge was not satisfied that there was anything other than the word of the appellant that domestic violence had contributed to her diagnosis of mild complex PTSD, particularly bearing in mind that the appellant had left her oldest child with a friend, that she had given birth to a seriously disabled child in the UK in respect of whom she was struggling to care, and that she had lost her mother in respect of whom she had been very close.

8. Having then dealt with the scaring report by Dr Longman and the expert country report by Dr V Baudais, and having found implausible the appellant's explanation as to how her trip to the UK was funded, the judge rejected the appellant's claim to be a victim of domestic violence. Indeed, the judge found there was inadequate evidence that the appellant had ever been married. The judge rejected the appellant's claim to be in fear of her father and found that she could return to her family in the Ivory Coast and receive their support. The judge then rejected the appellant's claim that she feared that her youngest child would be subjected to FGM. The appeal was dismissed.

9. The grounds of appeal contend that the judge failed to properly apply the vulnerable witness guidance in her assessment of the appellant's credibility, with specific reference to what the judge found to be inconsistent evidence relating to the police summons. The grounds further content that the judge failed to consider the evidence before her in a holistic manner including the country expert evidence and the Medico-Legal Report by Dr Longman.

10. Permission to appeal to the Upper Tribunal was granted by Upper Tribunal Judge Sheridan in a decision dated 28 January 2021 but sent on 8 February 2021. I set out the material elements of the grant of permission:

> "It is not arguable that, when assessing the credibility of the appellant's account, the judge failed to have had regard to her low level of education, as this is explicitly referred to in the second sentence of paragraph 32. However, it is arguable that the judge failed to take into consideration that the evidence of Dr Battersby was not merely that the appellant has a low level of education and is vulnerable, but that her profound lack of education makes it difficult for her to understand normal conversations (see page 11 of the report). It is arguable that this explains, at least in part, the apparent inconsistencies described in paragraphs 30 and 31 and the vagueness described in paragraph 32.
>
> Permission is granted on all grounds."

11. In a Rule 24 response dated 15 February 2021 the respondent stated:

> "The respondent does not oppose the appellant's application for permission to appeal and invites the Tribunal to remit the appeal to the First-tier Tribunal for a fresh hearing."

12. In directions dated 9 February 2021 but issued by the Upper Tribunal on 12 March 2021 Upper Tribunal Judge Pitt reached the provisional view that it would be appropriate to determine whether the First-tier Tribunal's decision involved the making of an error of law, and, if so, whether that decision should be set aside, without a hearing. On 22 March 2021 the respondent responded to Judge Pitt's directions noting once again that there was no challenge to the appellant's appeal and that the matter should be remitted to the First-tier Tribunal for a fresh hearing, and that an 'error of law' hearing was therefore not necessary in the circumstances.

13. Having regard to the overriding interest in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 to deal with cases justly and fairly, and having considered the nature and focus of the appellant's challenge to the judge's decision, and having satisfied myself that both parties have been given a fair opportunity of fully advancing their cases, and having regard to the judgment in **JCWI v President of the Upper Tribunal** [2020] EWHC 3103 (Admin), I consider it appropriate, in light of the Covid-19 pandemic, to determine the questions (i) whether the judge's decision involved the making of an error of law and, if so, (ii) whether the decision should be set aside, without a hearing pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Discussion

14. For the reasons succinctly expressed by Judge Sheridan in granting permission to appeal, I am persuaded that the judge has erred in law by failing to adequately take into account the otherwise unchallenged psychiatric report of Dr Battersby. In her report Dr Battersby found that the appellant was "… not likely to have any learning disability but does have a profound lack of education that will make it difficult for her to understand normal conversations." As was accepted by the respondent, it is entirely unclear whether the judge adequately factored in this material element of the psychiatric report. I am satisfied that, had the judge properly considered the psychiatric report, she may have reached a different conclusion in respect of the appellant's credibility.

15. I find for the reasons given that the decision contains mistakes on points of law that require it to be set aside.

16. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 18 June 2018 a case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

17. I have determined that the judge failed to assess material evidence when considering the appellant's credibility. The appeal will be remitted to the First-tier Tribunal so that a new fact-finding exercise can be undertaken. It will be for the First-tier Tribunal to determine the most appropriate mode of hearing the appeal.

Notice of Decision

The making of the First-tier Tribunal's decision involved the making of errors on points of law and is set aside.

The case is remitted back to the First-tier Tribunal to be decided afresh by a judge other than judge of the First-tier Tribunal Suffield-Thompson.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the respondent in this appeal 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.

D.Blum 10 May 2021

Signed Date
Upper Tribunal Judge Blum