IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/10738/2019**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On the 15th July 2022	**On the 23rd August 2022**
Extempore	

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

SA
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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.

Representation:
For the Appellant: Mr R Spurling, Counsel, instructed by Shahid Rahman Solicitors
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant appeals, with permission granted by a Presidential panel, against the decision of First-tier Tribunal Judge Karbani, promulgated on 14 January 2021. By that decision, the judge dismissed the Appellant's appeal against the Respondent's refusal of her protection and human rights claims.

2. The essence of the Appellant's protection claim was that she had been a practising lawyer in Bangladesh and had over the course of time been approached, harassed, threatened, and then attacked by a particular individual, Mr H. It was her claim that Mr H had political connections and that if she were to return to her country she would be at risk from him or others over whom he would be able to have influence.

3. The judge did not regard this claim as being credible. In a relatively detailed decision she made a number of adverse findings. I need not set out all of them here, but those which are the subject of specific scrutiny in this appeal include the following:

   (a) that the Appellant had not shown that Mr H existed or had communicated with her or had harmed her in any way;

   (b) that the Appellant had failed to show that she did indeed live a relatively affluent lifestyle in Bangladesh, which in turn undermined her argument that she would not have left that country but for the fear of Mr H;

   (c) that the Appellant had failed to provide any relevant supporting/corroborative evidence in relation to Mr H and his threats and harm done to the Appellant.

4. Following the judge's decision there was a protracted procedural issue which resulted in a hearing before a Presidential panel, the outcome of which was the now reported decision in SA (Non-compliance with rule 21(4)) [2022] UKUT 132 (IAC). Having heard full argument, the panel granted permission on all grounds. Subsequent to this, the Appellant provided amended grounds of appeal, drafted to reflect the points put to, and accepted by, the panel. The amended grounds also included a reply to the Respondent's rule 24 response.

5. At the hearing, Ms Ahmed had no objection to the application to amend the grounds being granted. That was an entirely fair and realistic position to have adopted, given the fact that the amended grounds did nothing more than reflect the arguments put to the panel previously and upon which permission to appeal had been granted. I granted the application to amend.

6. I address what I consider to be the three core issues in this case, having distilled them from the amended grounds of appeal and the oral arguments put to me at the hearing.

7. The first relates to an affidavit from the Appellant's sister, which was in evidence before the judge along with affidavits from other family members. This evidence was considered by the judge at [65]. The judge noted that "all the statements are almost identical …" The judge went on to find that "none refers to their own personal knowledge about when she told them about these horrific incidents. I attach little weight to the witness statements provided by her family members and friends in Bangladesh in support of her claim."

8. The difficulty with that analysis, in my judgment, is it failed to acknowledge or engage with the fact that the Appellant's sister's affidavit included evidence relating to her own personal knowledge of the claimed attacks by Mr H. This was, on any view, relevant evidence going to the core of the Appellant's claim. The judge was simply wrong to have stated that "none" of the affidavits referred to the personal knowledge of any of the family members. That might have been true in respect of the majority of them, but the sister's evidence required specific consideration on its merits and could not simply have been, as it were, lumped together with other evidence in respect of which the judge may well have had legitimate concerns about the similarity of the wording used.

9. The sister's evidence was highly unlikely to have been decisive, but that is beside the point. In my view, and applying the low threshold of materiality ("could" it have made a difference, not "would" it have), this evidence went to the issue of whether Mr H existed and whether he had in fact harmed the Appellant, as claimed. There is an error of law here and whether seen alone or cumulatively with other points I will refer to below, it is material.

10. The second point relates to affidavits from a Sub-Inspector of Police and a lawyer in Bangladesh. The relevant paragraphs in the judge's decision are [58] and [66]. In respect of the former, there is no reference to, or consideration of, these affidavits when the judge concluded that the Appellant had been unable to demonstrate "with supporting evidence" that Mr H even existed or had ever communicated with her. This, the judge found, undermined the Appellant's overall credibility. That conclusion is erroneous because relevant evidence had not been specifically addressed.

11. It is of course the case that a judge need not address each and every item of evidence before him/her. However, evidence relating to core issues in any given case must be adequately engaged with and accompanied by reasons, whether that evidence is accepted or rejected. The evidence in question here clearly went to the existence of Mr H, if not his specific interactions with the Appellant over the course of time.

12. The error is, in my view, material, partly because it potentially interacts with the first error outlined above, but also because it went to the core issue of whether Mr H existed at all. If that evidence had been specifically addressed a rational judge could have found that he did exist and that could have had a bearing on the rest of the evidence as to his alleged interaction with the Appellant.

13. I appreciate Ms Ahmed's point as to what appears to be an "even if" finding by the judge contained within [58]. That does not render the error I have identified immaterial in all the circumstances of this case. Further, that very same sentence within the paragraph contains the unsustainable finding that it was, in the judge's view, the Appellant's case that Mr H was her "client" (and friend). No reference is made to any evidence upon which that particular conclusion was based.

14. Ms Ahmed helpfully referred me to several answers given in the asylum interview. Having looked at these, the judge's finding that Mr H was the Appellant's "client" is unsustainable. There is no express reference to Mr H being a client and the fact that he might have visited the lawyer's chambers over the course of time does not, without more, lead to a sustainable inference that there was a lawyer-client relationship. The fact that the two were at one point friends is not the same thing.

15. Furthermore, the sentence immediately following after this within [58] is premised on the Appellant being a practising lawyer and there is a clear inference that the judge was in effect saying that the apparent lawyer-client relationship would have enabled the Appellant to have corroborated her evidence on Mr H as a result. That premise is flawed, for the reasons I have given.

16. The third point relates to the Appellant's personal circumstances in Bangladesh. She had specifically put forward the argument that she was a professional, had an affluent existence in that country, and that the only reason she would have left was because of the claimed fear of Mr H. This argument was specifically addressed by the judge at [56] and [57]. The judge concluded that the Appellant had failed to produce any supporting evidence of her circumstances in Bangladesh and as a result little weight was attached to that particular argument. The difficulty with that conclusion is that at [56] the judge had seemingly accepted (found it to be "plausible") that the Appellant had a good income and may have been able to purchase property. There were no specific adverse findings about her overall circumstances in Bangladesh and no reference to any inconsistent evidence on this issue provided by the Appellant.

17. Further, in the first half of [57] the judge accepted that the Appellant had been able to secure visitor visas to the United Kingdom by satisfying the ECO of "sound means" in Bangladesh. In light of this, the adverse conclusion at the end of [57] is, to say the least, in tension with what had come previously.

18. There is an absence of adequate reasons to explain the conclusion reached in light of the evidence and what else was said in these two paragraphs.

19. Alternatively, the judge had seemingly required a level of corroboration which was both unspecified and unexplained in light of what was before him and some of his findings. Whilst clearly not a decisive point, I regard this error as being material, given that it related to motivation and that motivation was itself focussed on the core of the claim, namely the fear of Mr H.

20. In summary, it is clear that the judge had significant concerns on credibility and there are other adverse findings which have not specifically been challenged and which when seen in isolation would, in my view, be sustainable. However, I take a cumulative view of the case and the errors I have identified on the face of it are interlinked and could have made a difference to the outcome of the appeal before the judge.

21. In light of the foregoing, the judge's decision should be set aside, having regard to my discretion under section 12(2)(a) of the TCEA 2007.

22. In terms of disposal, I regard this case as being appropriate for remittal to the First-tier Tribunal on an exceptional basis. None of the judge's findings of fact can be preserved in light of the errors I have identified. The rehearing of this case will require extensive fact-finding and that should properly be done in the First-tier Tribunal rather than the Upper Tribunal.

Notice of Decision

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 of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

Directions to the First-tier Tribunal

1) **This appeal is remitted to the First-tier Tribunal for a complete re-hearing with no findings of fact preserved;**

2) **The remitted hearing shall be heard by a judge of the First-tier Tribunal other than Judge Karbani;**

3) **The First-tier Tribunal with you any other further case management directions it deems appropriate.**

Signed H Norton-Taylor Date: 20 July 2022

Upper Tribunal Judge Norton-Taylor