



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-001404
(PA/53304/2021); IA/12711/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 29 March 2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

LD
(anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Lagunju, Counsel instructed by Howe & Co Solicitors
For the Respondent: Mr Avery, Senior Home Office Presenting Officer

Heard at Field House on 2 February 2023

Order Regarding Anonymity

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant or any member of her family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a national of Turkey, born in 1992. She appeals with permission against the decision of the First-tier Tribunal to dismiss her appeal on protection and human rights grounds.

Background and Matters in Issue

2. The substance of the Appellant's claim is that between 2017 and 2018 she was raped on several occasions, in her family home, by a friend of her father; now her Kurdish family have discovered this fact she is at a real risk of being killed or otherwise harmed in 'honour' based violence.
3. The Respondent refused to grant protection. She did not accept that the claim was credible, focusing on the fact that the Appellant is currently subject to an entry ban, having tried in June 2017 to fly to the UK using a fake visa. The Respondent further considered that the Appellant could avail herself of the protection of the Turkish state, and/or avoid the adverse attention of her family, or her attacker, by moving to another place in Turkey.
4. The Tribunal dismissed the appeal because it did not believe the account advanced by the Appellant. The decision dated 14th December 2022 gives seven reasons that can be summarised as follows:
 - i) The Appellant failed to claim asylum in Cyprus *en route* to the UK;
 - ii) If the Appellant was being raped why didn't she leave sooner;
 - iii) If the Appellant has been raped why hasn't she sought counselling or other medical support;
 - iv) How could the claimed attacks have taken place in the family home if her mother was a housewife;
 - v) She used a fake document in order to obtain a visit visa in 2017, which generally undermines her credibility;
 - vi) She married another Turkish national in the UK and their short courtship indicates that this was an attempt to "bolster the claim for asylum";
 - vii) The Appellant did not call her husband or siblings (a number of whom are in the UK) to give evidence.
5. The grounds of appeal are that in reaching these adverse credibility conclusions the Tribunal erred in law in failing to have regard to relevant evidence, and making findings lying outwith the range of reasonable responses to the case before it (perversity).

Error of Law: Discussion and Findings

6. The Tribunal gave seven reasons for disbelieving the Appellant's account. I am satisfied that each of these reasons is problematic.
7. At paragraph 17 of its decision the Tribunal notes that the Appellant travelled to the UK via Northern Cyprus. It then says this:

"Though the respondent stated in the refusal letter that there were no issues under s8 Asylum and Immigration (Treatment of Claimants etc) Act 2004 as she claimed asylum promptly on arrival in the UK, she did not claim asylum in Cyprus (a safe country) which does go to her credibility".

8. This was where the Tribunal started its assessment of the credibility of the claim, and it was wrong to do so for two reasons. First, it is quite clear from the reasons for refusal letter that the Respondent had expressly considered whether the transit in Cyprus engaged section 8: the point is not confined to the timing of the asylum claim. Second, the reason that the Respondent did not take the point later taken by the Tribunal is that Northern Cyprus is not in fact a safe third country as listed in Schedule 3 to the 2004 Act.
9. From there the Tribunal draws negative inferences from the evidence about the Appellant's own behaviour: if she was being repeatedly raped why didn't she leave sooner, and why has she not sought psychological support for trauma? I am quite satisfied that these were improper inferences to draw. As to the latter, there is no uniform model of how anyone might behave or recover after sexual assault. It would be quite reasonable for a decision maker to note that the *presence* of such evidence would have positively weighed in a claimant's favour, but not as here, identify its *absence* as a reason to find "her evidence wholly lacking in credibility". As to the former the Tribunal has given no consideration at all to the socio-cultural context in which the alleged incidents are said to have taken place. The whole point of the claim is that as a young Kurdish woman from a traditional family she could not reveal to her family that she had been assaulted, or that she was living in fear of it happening again, particularly where the perpetrator was a respected male in the community. It is trite in this jurisdiction that protection claims should always be assessed in the context of the relevant background material, and there is extensive and specific guidance to that effect in claims raising gender based violence¹. Once that context is understood, the 'delay' of 18 months in the Appellant managing to flee the family home and everything she knew seems entirely understandable.
10. At its paragraph 20 the Tribunal notes that the Appellant had apparently given evidence that her mother was a housewife who did not go out much, and "it was not explained" how the alleged attacks could therefore have taken place in the family home. Ms Lagunju submits this finding to be perverse: it was not the Appellant's evidence that her mother *never* left the family home (ie kept *pardah*). It is debatable whether that reasoning reaches the high threshold of irrationality; I am however satisfied that it was flawed for unfairness as the point does not appear to have been put to the Appellant.
11. The Tribunal concludes its assessment of the evidence by making a series of general points about the Appellant, none of which, with respect, make any sense to me. It is very difficult to see how getting married in the UK to a man with no valid leave to remain could in any way "bolster" this asylum claim. If anything the marriage weakens the case, since it would have a material bearing on the Appellant's ability to internally relocate within Turkey. Nor can I understand how his failure to give evidence on her behalf made any difference at all, since he did not know the Appellant at any of the material times. A similar point may be made in respect of the Appellant's brother, who was then already in the UK. Finally the finding that her credibility is undermined because in 2017 she

¹ See for instance: UNHCR GUIDELINES ON INTERNATIONAL PROTECTION: *Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* at paragraph 36(x); the UKVI policy statements *Assessing credibility and refugee status in asylum claims lodged before 28 June 2022* (Version 10.0) at page 36 and more generally *Gender issues in the asylum claim* (Version 3.0) and the UK Immigration Appellate Authority *Asylum Gender Guidelines* at 54.

submitted a document found to be counterfeit fails to have regard to the timing, and context of that attempt by the Appellant to get to the UK.

12. The errors in the decision below are extensive, and are such that I cannot be satisfied that the Appellant has had a reasonable opportunity to put her case and have that case considered justly. In those circumstances I consider it appropriate that the matter be remitted to the First-tier Tribunal for hearing *de novo* by a Judge other than the one who has already dealt with it. I use that odd form of words because the decision itself is not clear about who made it: the header states that it is a decision by Judge Rowland, while it is signed by a CJ Sweet. Enquiries to deal with this ambiguity should be made by the First-tier Tribunal listing team, to ensure that it goes to another judge.

Notice of Decision

13. The appeal is allowed. The decision of the First-tier Tribunal is set aside and the decision must be remade in the First-tier Tribunal (please note my paragraph 12 above).
14. There is an order for anonymity.

Upper Tribunal Judge Bruce
14th February 2023