



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/00461/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29 October 2014**

**Decision & Reasons Promulgated
On 4 November 2014**

Before

Upper Tribunal Judge Southern

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BJ

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer

For the Respondent: Ms A Vatish, Counsel instructed by Hilcrest Solicitors LLP

DETERMINATION AND REASONS

1. The appellant, who of course was the respondent before the First-tier Tribunal, has been granted permission to appeal against the decision of First-tier Tribunal Judge Cockrill who, by a determination dated 20 August 2014, allowed the respondent's appeal against the removal decision that accompanied refusal of her asylum and

human rights claim. For convenience of expression I shall refer to the respondent as the claimant.

2. The claimant, who was born on 16 May 1988, is a citizen of Pakistan. She arrived in the United Kingdom in April 2012 and was admitted as a visitor. Her application for that visa had been refused by the Entry Clearance Officer but she and her brother, who had also applied for entry clearance, successfully appealed to the First-tier Tribunal persuading the judge that a brief family visit was all that was genuinely intended. However, she overstayed that leave and on 7 January 2014 claimed asylum.
3. A detailed account of the asylum claim is set out in the Secretary of State's refusal letter but for present purposes the claim can be summarised as follows. The claimant, who had never worked in Pakistan but had been in education up to the age of 20, lived with her parents and one of her brothers who managed the family business which was a fruit farm. She said that her father had always been violent towards her and had never let her leave the house. In 2012 the claimant's father told her that he had arranged for her engagement to a 60 year old man whom she had never met. The claimant told her mother that she had no wish for such a match and so her mother contacted the claimant's cousin who lived in London and made arrangements for the visit that the claimant and her brother subsequently were able to make to the United Kingdom. The claimant said that if she returned to Pakistan her father would force her into this unwanted marriage or may kill her and there was no sufficiency of protection available from the authorities. The claimant said that she did not claim asylum immediately upon arrival in the United Kingdom because she was scared and because she was not aware of the process for doing so.
4. The Secretary of State refused the application because for the reasons that are set out in a lengthy and detailed refusal letter she did not believe to be true any part of the claimant's account of facing the prospect of being forced into a marriage against her wishes.
5. In his determination the judge summarised the Secretary of State's case. It was not accepted that the claimant's father had been violent towards her, a number of credibility points had been raised in the refusal letter and it was not accepted that the claimant would be forced into an unwanted marriage upon her return to Pakistan. The Secretary of State pointed to the claimant's failure to claim asylum earlier and in any event contended that there was a sufficiency of protection available from the authorities should she need it. Finally, the Secretary of State said there were shelters available for a person facing difficulties of the type claimed by this claimant.
6. Having heard oral evidence from the complainant the judge received submissions from both representatives. He summarised the submissions advanced on behalf of the Secretary of State at paragraph 30 of his determination as follows:

“I heard a submission from Mr Hewertson; he relied upon the terms of the refusal letter, arguing that it was a comprehensive letter setting out fully the respondent’s case. It was highlighted that really the crux of the appeal related to the appellant’s credibility and reference was made to the various challenges that were raised in the course of the refusal letter.”

From that observation made by the judge in the determination it is unambiguously clear that the credibility challenges raised in the refusal letter were at large and in play before the First-tier Tribunal.

7. The findings of the judge are set out in the section of the determination beginning at paragraph 33. As Ms Vatish, who appears for the respondent today, has made clear, the judge recognised that the central issue to be resolved was the credibility of the claimant’s account. The judge said that it was conspicuous that there was no evidence offered by the claimant’s brother or cousin both of whom were in the United Kingdom and might be thought well-placed to support the account advanced by the claimant.

8. The judge then said:

“All in all then there is not a lot of confirmation of what the appellant has been saying from any relative in this country and that is perhaps rather surprising and unusual.”

9. Despite that the judge accepted the claimant’s evidence and accepted to be true all that she said about her father’s intention to force her into an unwanted marriage saying:

“I have reached that fundamental conclusion because looking at the matter overall I do consider that the appellant is indeed credible”.

That is the point made by Ms Vatish in her submissions this afternoon. The judge, in her submission, was taking a holistic view of the evidence before him in reaching his conclusion on the basis of his assessment of the evidence as a whole.

10. The difficulty with that argument is that although the judge was aware and had made clear that he was aware that reliance was placed by the Secretary of State upon the credibility challenges set out in the refusal letter there is nothing at all in the determination to suggest that the judge had had any regard to those challenges.

11. The question to be addressed therefore is whether his failure to do so, and I am quite satisfied that he did fail to do so, was or may have been material to the outcome.

12. The Secretary of State has raised a number of challenges to the claimant’s credibility that were legitimately raised and required to be considered and resolved by the judge including the following:

- (a) Although the claimant said that she and her siblings had suffered years of abuse from her father there had been no attempt to leave. Given that she has three adult brothers it is reasonable to expect, said the respondent, that they would have been willing to assist in that regard, especially as two of those brothers had themselves decided to leave home.
 - (b) The account given by the claimant of her freedom being restricted was inconsistent and contradictory. She said both that she was not allowed to leave the family home and that she had attended school until the age of 20 to complete her education.
 - (c) Given the account of her father being violent and controlling towards members of the family it was not said to be credible that the claimant's mother would have arranged a marriage for the claimant's sister without his permission and it was not credible, according to the respondent, that he would have allowed that sister to leave the country.
 - (d) The claimant said that her unwanted engagement was arranged some considerable time before she left Pakistan and yet the marriage had not taken place. If her father had decided that she should marry the man of his choice it was said by the respondent not to be credible that financial constraints would have prevented the marriage from taking place.
 - (e) It was said not to be credible if such an engagement had been in place for so long that the claimant's fiancé would not have arranged to meet her before she left Pakistan.
 - (f) The Secretary of State argued that there was a lack of credibility in the account of documents from the United Kingdom required in respect of the visa application that was being made without her father's knowledge being delivered by hand otherwise than in the usual way by the Post Office to the family home.
 - (g) In any event the claimant gave a contradictory and inconsistent account according to the respondent of how these documents were delivered to her.
 - (h) The Secretary of State said that it would stretch credulity beyond its limit that by coincidence a number of events came together to facilitate the claimant's plans.
13. It may be of course that there was a complete answer to each of those concerns but those were issues that were relied upon by one party to the proceedings, had been specifically raised before the judge and were issues that the judge was obliged to engage with. As I have observed there is nothing in the determination to indicate that the judge did take those matters into account or that he resolved them. If he did

so then it is impossible to know from the determination for what reasons he rejected them.

14. Therefore, in either event an error of law is disclosed on the basis that either the judge failed to have regard to material considerations or he failed to give anything approaching adequate reasons for rejecting the case advanced and relied upon by the Secretary of State. That is sufficient to establish that the decision of the judge cannot stand. The determination will be set aside other than as a record of what was said at the hearing and the appeal will be remitted to the First-tier Tribunal to be determined afresh by a different judge of that Tribunal.

Summary of decision

15. The First-tier Tribunal made an error of law and the determination of Judge Cockrill is set aside.
16. The appeal is remitted to the First-tier Tribunal to be determined afresh by a different judge of that tribunal.

Signed



Date 31 October 2014

Upper Tribunal Judge Southern