



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

Appeal Number: PA/09163/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd January 2018**

**Decision & Reasons Promulgated
On 15th January 2018**

Before

UPPER TRIBUNAL JUDGE COKER

Between

[P V]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Heller, instructed by John Street solicitors
For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant's claim for international protection and/or leave to remain on human rights grounds was refused by the respondent. Her appeal, heard before First-tier Tribunal Judge Bird (incorrectly recorded on the First-tier Tribunal decision as Beg) on 16th October 2017, was dismissed for reasons set out in a determination promulgated on 19th October 2017.

2. The appellant sought and was granted permission to appeal by First-tier Tribunal Judge Hodgkinson on 8th November 2017 on the grounds it was arguable that the judge erred in law as follows:
 - Ground 1: Failed to take into account the appellant's proffered explanation why she had delayed claiming asylum;
 - Ground 2: Made speculative, unsustainable and unreasoned credibility findings
 - Ground 3: In her assessment of sufficiency of protection;
 - Ground 4: In her consideration of the viability of internal relocation; and
 - Ground 5: By making contradictory and unsustainable findings with regard to her relationship with Mr Sadok (the human rights claim)
3. The essential basis of her claim for international protection was that her step father had raped and abused her on several occasions after she had reported him to the police for running an illegal betting business. She claimed she had tried to run away but had been followed; her stepfather was influential and had contacts within the police and if she returned to Thailand he would kill her.

International protection claim

4. Ms Heller amplified the grounds upon which permission had been granted. She acknowledged that, in themselves, each element she referred to was insufficient to found a successful conclusion that the judge had materially erred in law but that cumulatively they build the foundation to show the decision was perverse.

Ground 1

5. The consideration by the judge of s8 Asylum and Immigration (Treatment of Claimant's) Act 2004 at the commencement of her conclusions, the use of the word 'significantly' in terms of the undermining of the appellant's credibility and the failure to refer to the appellant's explanation that it was the threat of removal that concentrated her mind and caused her to make her protection claim were, it was submitted, indications that the judge had placed too great a weight upon the late claim when considering the credibility of the claim overall.

Ground 2

6. Ms Heller referred to a number of matters in connection with this ground. In particular
 - that it was speculation on the part of the judge to conclude that, if the appellant had contacted the police as she claimed, her stepfather would have said more to her than "don't get involved in my business";
 - that the fact that the appellant did not give a statement to the police was not the appellant's fault but rather a result in police inaction; the lack of

evidence of police follow up is supportive of her fear of lack of adequate protection from the police.

- The judge failed to give any reason for finding that she did not tell her friend of the rape, as she claims.
- It was credible that the appellant, having undergone the traumatic experiences she claimed would be unable to recall dates and times; she consistently stated they occurred whilst she was at university.
- Although the judge said she would be able to utilise her degree, the submission was that she would again be forced into prostitution because of lack of employment.
- It was credible that the appellant did not tell her mother because they were not close and that she did not tell her uncle and aunt because she did not want them to get into trouble.
- If she returned to Thailand it was credible that her uncle would think she was going to report him to the police and the finding that her uncle would, after 7 years, consider it unlikely that she would do so was inaccurate.

Ground 3 and 4

7. Ms Heller submitted that more detailed information and background material had been provided to the Judge which she had failed to take into account in reaching her conclusions that there was sufficiency of protection and that internal relocation would not be unduly harsh.

Discussion on grounds 1 to 4.

8. The First-tier Tribunal judge has not made clear whether she has considered the timing of the appellant's asylum claim holistically or whether, given the delay by the appellant in making her claim, that has impacted upon her fundamental assessment of the appellant's credibility. This is a protection claim and must be considered with anxious scrutiny. The first finding by the judge is that the delay in claiming asylum of some 7 years has "significantly" damaged the appellant's credibility. Although of course in writing a decision there is a linear process to be followed, the judge has not made clear that the delay is one element of her consideration but rather the decision reads that the judge has viewed the appellant's claim through the prism of significantly damaged credibility. The findings that follow cannot withstand such an error. On that basis, the protection decision cannot stand. There is a material error of law and I set aside the protection decision to be remade.

Ground 5 discussion

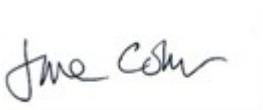
9. This ground is essentially a challenge to the Article 8 findings of the judge the basis of which is that there is no genuine and subsisting relationship between the appellant and Mr Sadok. The complained of discrepancy does not sit easily with a finding that there is no genuine and subsisting relationship and, although not directly related to the credibility findings in the protection claim decision, I have considerable concern that the judge had,

both by reference to the delay/s8 and by reference to several failed residence card applications reached that conclusion without considering the evidence as a whole and in particular the oral evidence of the applicant and Mr Sadok. The judge erred in finding that Mr Sadok did not have a permanent right of residence because he did not have a residence card to that effect. A residence card is of course only declaratory and is not compulsory to establish permanent right of residence. It may also be the case that an earlier application for a residence card by the appellant was incorrectly refused a right of appeal although the exact details of the previous applications was not aired before me or the First-tier Tribunal judge. The combination of all these matters do, when considered in conjunction with my findings on the protection claim, amount to an error of law such that I set aside the decision.

Conclusion

10. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
11. I set aside the decision to be remade, no findings preserved.
12. I remit the appeal to the First-tier Tribunal to be re-heard.

Date 10th January 2018



Upper Tribunal Judge Coker