



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01812/2019

THE IMMIGRATION ACTS

Heard at Field House
on 13 September 2019

Decision & Reasons Promulgated
on 18 September 2019

Before

UPPER TRIBUNAL JUDGE HANSON

Between

IS
(Anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G O'Ceallaigh instructed by Duncan Lewis & Co Solicitors (Harrow Office).

For the Respondent: Mr S Walker Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-Tier Tribunal Judge Devittie promulgated on the 31 May 2019 in which the Judge dismissed the appellant's appeal on asylum grounds.

Background

2. The appellant is a citizen of Pakistan born on 17 September 1978. Permission to appeal was sought on 6 grounds.
3. On 16 July 2019 First-Tier Tribunal Judge Kelly granted permission to appeal on Ground 4 only.
4. The appellant renewed the application for permission to appeal on the remaining grounds to the Upper Tribunal, which was considered by Upper Tribunal Judge Gill who in a decision of 3 September 2019 refused permission to appeal on any of the remaining grounds. The appeal therefore comes before the Upper Tribunal limited to assessing whether the Judge made an error of law for the reasons pleaded at Ground 4 which is in the following terms:

Ground 4: in failing to make findings on material matters the FTT erred in law

22. The result of the FTT's approach in concentrating on the documents relied on by the Appellant was that it failed to make findings on several other material matters.
23. Firstly, the FTT erred in failing to make findings on the question of whether the Appellant's brother had been murdered or not. That was a material fact that supported her case: (i) by showing why she did the work she claimed to do, which the FTT ultimately disbelieved; and (ii) by showing previous incidents of persecution (*Katrinak v SSHD[2001] EWCA Civ 832 at [23]*).
24. Secondly, despite the Appellant being unwell to the point where she had recently been hospitalised with a demonstrable suicide risk, the FTT failed to consider whether or not there was a risk of an Article 3 ECHR breach on her removal. This was a matter expressly before it (see refusal letter at p24).
25. Thirdly, the FTT in considering the Appellants credibility failed to give any corroborative weight of the very fact of her illness. Given the fact that it was apparently accepted that she was a successful lawyer in Pakistan, the fact that she was plainly traumatised was clearly material to the question of whether she left the country voluntarily.
26. The Appellant submits that the failure to consider these essential material matters amounted to errors of law.

Error of law

5. The Judge appears to accept that the appellant's brother had been murdered in [11(5)] of the decision under challenge in which the Judge writes:
 - (5) It is of concern to me that the Appellant's evidence demonstrates that it is only in the months preceding her arrival in the United Kingdom in July 2018 when she claimed asylum, that suddenly the Taliban began to target her with persistent consistency. In the light of the fact that her brother was killed in 2009, that she had all along been practising as an advocate in human rights activities and as she claims in fighting and bringing to justice terrorists in the Courts, there is no credible explanation as to why, after a period of almost a decade, there should be the sudden eruption in Taliban activity against her, in a few months before she claimed asylum. This is a feature of the evidence that in my view significantly

undermines the credibility of the claim that the Appellant has ever received threats from the Taliban and the weight of the documentary evidence she relies on.

6. There was a considerable volume of evidence made available to the Upper Tribunal in the bundles submitted under cover of a letter of 12 September 2019 and handed in on the day. These included evidence regarding the appellant's brother's death at the hands of the Taliban and a post-mortem report confirming the appellant's brother had been shot. Mr O'Ceallaigh's submission was that the Judge's short sentence that the appellant's brother had been killed in 2009 was insufficient as there are no specific findings on the appellant's submissions relating to those responsible for the appellant's brother's death, the issue of causation, and the relationship of the same to the appellant's claim that she faced a real risk on return from this source.
7. The task for the Judge was to consider what is reasonably likely to happen to the appellant on return which requires an assessment of the evidence as a whole. Mr Walker on behalf of the Secretary of State accepted there was considerable evidence relied upon by the appellant on which there was no evidence of whether the same had been properly considered or adequate findings made upon the same. It was accepted by Mr Walker that an analysis of the evidence compared to the decision reveals arguable merit in the claim the Judge failed to properly consider the evidence as a whole and to make adequate findings on which aspects of the evidence were accepted and not accepted, sufficient to amount to material error.
8. In relation to the second issue, at the commencement of the hearing time was taken to examine the Judge's written record of proceedings, that prepared by the Presenting Officer on the day, and the papers as a whole to ascertain whether human rights were a live issue before the Judge. There is clear reference in the original Grounds of appeal to a challenge on human rights grounds pursuant to articles 2, 3 and 8 ECHR. It was accepted, following an analysis of the available material, that human rights had been specifically raised before the Judge and was therefore a live issue upon which the Judge was required to make specific findings. A reading of the determination shows no such findings were made with the Judge only dismissing the appeal on asylum grounds at [14]. The humanitarian protection (Article 15(c)) and human rights claims therefore remain extant upon which a decision is required. Mr O'Ceallaigh confirmed the appellant is relying upon articles 2 and 3 in relation to the protection elements, article 3 in relation to health issues (mental health), and article 8 in relation to the appellant's private life in the United Kingdom. The appellant does not claim an ability to satisfy the Immigration Rules on human rights grounds.
9. In relation to the third issue: although the Judge refused the adjournment request in relation to which permission to appeal has not been granted, it does not appear to be disputed that the appellant has mental health problems. The more recent statement confirms that with the assistance of medication she has considerably improved but that was not the situation appertaining at the date of the decision under challenge. The Judge should have appreciated that the appellant is a vulnerable witness in relation to which the Presidential Guidance Note concerning vulnerable witnesses applies. It is not indicated that any special

arrangements were required to assist the appellant who was called by her own representative to give oral evidence. The Judge was, however, required to set out in the determination, in relation to findings made, how the appellant's health issues had been factored into the weight given to the evidence. At [11(8)] the Judge writes:

"In assessing appellants evidence I have borne in mind the evidence on her mental state and that an application was made to adjourn this matter on the basis that she was unfit to give evidence. My credibility findings have in the main been based on the record of her interview and the documentary evidence she presented when she claimed asylum. Accordingly, I do not have concerns that there are aspects of evidence and cross-examination where her evidence may be disadvantaged on account of her mental state."

10. It was submitted on the appellant's behalf that the Judge fails to make adequate findings on the basis of the appellant's evidence as a whole which must include the evidence that she gave in response to questions put in cross-examination. Does the making of the credibility findings in the main based upon the documentary evidence mean the Judge failed to give proper weight to the oral evidence of the appellant? It is not clear what reasonable allowances were made as a result of the appellant's mental health issues to the evidence that she gave and the weight the Judge applied to the same or what aspects of that evidence were accepted and/or rejected.
11. It was accepted on the respondent's behalf that the Judge failed to make sufficient findings in relation to core aspects of the appellant's case and gave inadequate reasons in support of the findings made. It was accepted on the respondent's behalf that the Judge failed to determine the human rights aspects of the case at all, and accepted that the concerns outlined regarding the failure to give any consideration to the corroborative weight of the appellants illness when considering the appellant's credibility undermined the Judge's conclusions and established material legal error.
12. In light of the fundamental nature of the flaws in those matters on which findings have been made, the rejection of the asylum claim shall be set aside. In light of the need to make extensive findings of fact in relation to the key aspects of this appeal, in the light of the entitlement of the appellant to have a decision in relation to her human rights claim, and taking into account the Presidential Guidance relation to the remittal of appeals to the First-Tier Tribunal, it is considered this is a case in which it is appropriate for the decision of the Judge to be set aside, for there to be no preserved findings, and for the appeal to be remitted to be considered afresh by another judge based at Hatton Cross, other than Judge Devittie, assigned by the Resident Judge of that hearing centre.

Decision

13. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remit the appeal to Hatton Cross.**

Anonymity.

14. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 13 September 2019