



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

Appeal Number: PA/10163/2018

THE IMMIGRATION ACTS

Heard at Field House

On 20 January 2020

**Decision & Reasons
Promulgated**

On 10 March 2020

Before

UPPER TRIBUNAL JUDGE PITT

Between

**MI
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Rahman, Counsel, instructed on Direct Access

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) the Upper Tribunal makes an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

2. This is an appeal against the decision issued on 1 October 2019 of First-tier Tribunal Judge Devittie refusing the appellant's protection claim and her claim under Article 8 ECHR.
3. The appellant is a citizen of Bangladesh born in 1969. She came to the UK in 2005 on a visit visa and overstayed that leave. She has been living with an aunt since then and has two brothers who are settled in the UK. The appellant claimed asylum on 5 February 2018. Her asylum claim was made on the basis of having been in an abusive marriage.
4. The appellant's asylum claim was refused by the respondent on 6 August 2018. She appealed that refusal to the First-tier Tribunal and the appeal came before First-tier Tribunal Devittie on 16 September 2019. The First-tier Tribunal refused her asylum claim and also refused her Article 8 ECHR claim.
5. The appellant's grounds challenge the findings made on her history in Bangladesh in so far as they were relevant to her claim under paragraph 276ADE(vi) of the Immigration Rules, that she would face very significant obstacles to reintegration in Bangladesh as a single woman with mental health issues and no family support in Bangladesh.
6. The First-tier Tribunal records the appellant's evidence regarding her relationship with her brother in Bangladesh and her stepmother in paragraph 4(ii) as follows:

"It was her stepmother and her middle brother, who were sharing the house with her. Her stepmother had never liked her from the outset. Her brother ran into a dispute with her over her inheritance of property from their father. It was then, that her brother in the United Kingdom, sponsored her on a family visit to the United Kingdom. She arrived in the United Kingdom on 9 July 2005. She has had no further contact with her stepmother and her brother. She has learned that her brother has sold their father's property and retained all the proceeds contrary to her father's wishes that the property be distributed equally amongst the four of them".
7. In paragraph 5 of the decision the judge set out the evidence of the appellant's younger brother, [T] who lives in the UK. He is recorded as having stated:

"When his father died his brother in Bangladesh was very abusive towards the appellant. He moved to the United Kingdom in September 2005. He works at a restaurant and is settled here. He has witnessed his sister's condition deteriorate since her arrival. She spends much time crying. She has OCD. It is not safe for her to go out alone. Since claiming asylum, she is now able to access medical help and is now undergoing therapy. His brother in Bangladesh has sold all the land that they inherited".
8. In paragraph 6 the First-tier Tribunal Judge records the evidence of the appellant's aunt, [A], confirming the appellant's diagnosis of OCD, her anxiety and her vulnerability which makes life in public particularly difficult for her.

9. In paragraph 8, the First-tier Tribunal Judge accepted that the appellant was a vulnerable witness and that her evidence and credibility had to be assessed in that context. Nothing before me suggested that the appellant should not be treated as vulnerable witness in these proceedings.
10. The First-tier Tribunal Judge went on in paragraph 9 to find that the appellant's asylum claim arising from having been in an abusive marriage was not made out. There is no challenge to that conclusion before me.
11. The judge also found that a claim to be in need of protection on the basis of treatment she would face from her brother and stepmother in Bangladesh was also not made out; see paragraph 9(ii). The judge reached this conclusion, in part, because this aspect of the claim was not put forward at the outset of her claim in her screening interview and despite being asked at the end of her Asylum Interview Record to identify any other basis of claim. Also, in paragraph 9(iv) the judge refers to the evidence of the appellant's brother concerning a recent visit to Bangladesh, stating:

"In relation to fearing her brother, evidence was given by her brother who resided in the United Kingdom, that he had recently travelled to Bangladesh for a three week period. He did not state that he had in any way been under threat of harm from their brother. In my opinion he was not able to give a credible explanation as to why, if the inheritance dispute was between his brother in Bangladesh and their siblings in the United Kingdom including himself, he was able to travel to Bangladesh without any harm or even the threat of harm being levelled at him. The only explanation he provided which I find entirely unsatisfactory, is that his brother would not have caused him any harm, because he would have been aware that he was visiting for a short period. He would be minded to harm the appellant because he would know that she was there for a permanent stay. I did not accept this explanation. If he had grievances and an intention to harm his siblings, I did not see what difference it would make to him that the one was staying for a short period and the other was there for a longer period. In any event, he would have more apprehension about his brother, and not the appellant, who is a single woman with no male protection".

12. The judge went on to find in paragraph 9(v):

"It is uncontested that the land that was subject to the inheritance dispute has been disposed of by their brother and the proceeds have been realised. This was more than fourteen years ago. It is difficult in these circumstances to accept that the brother will still have a reason to perceive either the appellant or her siblings as posing a threat of harm to him. I do not accept the suggestion that the brother would think that they would reclaim the land after fourteen years".

13. The judge went on to state in paragraph 10:

"In the light of these unsatisfactory features I make the following findings of fact:

I do not accept that the appellant has established that she is estranged in any way from any of her immediate family in Bangladesh, including her brother and her stepmother. In my opinion her evidence in this regard is entirely contrived”.

14. In paragraph 12 the judge turned to an assessment of whether the appellant would face “very significant obstacles” to reintegration in Bangladesh. He found as follows:

“(i) I have found that the appellant does have a family who are close to her and upon whom she could rely for support. Her evidence that she fears harm from them I found to be not credible. In addition, the appellant does have two brothers settled in the United Kingdom who are in full-time employment and an aunt with whom she lives, who runs a business and is a qualified accountant. The appellant’s brother says that he would not have the resources to provide any financial support to the appellant. The appellant’s aunt also says that she would not be able to provide any support in financial terms to the appellant in Bangladesh. I accept that there are financial limits a family member’s capacity to provide support to those living outside the United Kingdom. I do not however accept that her three immediate relatives that have been mentioned in these proceedings, who are in full-time economic activity, would not be able to provide even modest financial support to the appellant in Bangladesh. Such financial support would provide significant means to facilitate her integration in Bangladesh. She has lived in that country for most of her life and she has family members to whom she can return.

(ii) I accept that the appellant does suffer from ill health and in particular that she suffers from depression. There is no suggestion that she could not get treatment for depression in Bangladesh. The evidence of the appellant’s aunt and brother, is that the appellant is a person who needs daily care and that she cannot perform even basic tasks, like walking in traffic or attending appointments. I do not accept this evidence as credible. The witnesses who gave this evidence are in full-time employment and there was no indication in the evidence as to who was this appellant’s full-time carer. In my opinion she has none because she does not need one. They stated she has poor memory, needs personal care on a daily basis, is unable to negotiate her way through traffic when walking and is unable to socialise. I would simply point out that there is no medical evidence to support the conclusion that this is a person who is in need of daily care. I have no doubt whatsoever that if this was the case, the close bonds between this appellant and her brother and aunt, would have meant that such evidence would have been obtained from a medical expert.”

15. The judge indicated in paragraph 14 of the decision that:

“I have also found that she is not estranged at all from her immediate family members including her stepmother and her brother in Pakistan and that these are people who would be supportive of her if she returned”.

16. The judge therefore concluded regarding the appellant’s Article 8 claim, in paragraph 15:

“I accept that she would suffer a measure of social stigma because she is a divorced woman but I do not accept that with the support of family members in Pakistan, this situation would create an intolerable situation for her. I accept that she has resided in the United Kingdom for fifteen years and is reluctant to return as she has become accustomed to life here and has established strong bonds with her family members in the UK”.

17. The grounds of appeal challenge the decision of the First-tier Tribunal not as regards the findings on her protection claim but as regards the assessment of “very significant obstacles to reintegration” assessment under paragraph 276ADE(vi). The grounds of appeal maintain that the finding that the appellant will have the support from her brother in Bangladesh and be able to live with him and her stepmother is perverse. This is because it was accepted that the brother in Bangladesh took the inheritance of all of the siblings and sold it keeping the funds for himself. The grounds maintain in paragraph 1(a):

“In essence, the Judge accepts that the brother swindled his siblings, including the appellant, out of their inheritance. To then find in paragraph 10 that that (sic) appellant has not established ‘*in any way*’ that she is estranged from her brother must be irrational”.

18. The grounds go on to argue even if the difficulties the appellant faced when living with her brother and stepmother did not show a real risk of serious harm on return, the judge was still required to assess the evidence of the appellant and her brother as to the brother no longer being willing to have her in the family home and bullying her whilst she was still living there. It was accepted in paragraphs 9(iv) and (v) that the brother in Bangladesh took the inheritance of the siblings in the UK. This was evidence that supported the appellant’s claim not to be welcome in family home. The evidence of the appellant and her brother on her mistreatment by her brother and her stepmother because they could not tolerate her OCD and the appellant being unable to return to live with them now was not questioned at the hearing by the respondent or the judge. The grounds also refer to the appellant giving details of the verbal abuse she suffered from her brother in her asylum interview.
19. It is my conclusion that the grounds of appeal show a material error of law in the decision of the First-tier Tribunal in the assessment of the evidence concerning very significant obstacles to the appellant reintegrating in Bangladesh.
20. There was evidence before the First-tier Tribunal on the difficulties the appellant faced in the past from her brother and stepmother in Bangladesh. The appellant provided evidence on this in her asylum interview. In response to questions 35, 36 and 37, the appellant stated that after her father died her brother in Bangladesh was “a bit funny, different” and then she was brought to the UK by a UK based brother. In response to question 36 she stated that she did not return to Bangladesh having been granted a visit visa because “all of the family here and

everyone looking after me I enjoyed it and wanted to stay here. There was no one to return back to and with all the problems”.

21. In response to question 38 she stated that “my brother started torturing me” after her father died and then she was brought to the UK. In response to questions 53 to 58 the appellant stated that after her father passed away her relationship with her brother and stepmother “got bad” as “they didn’t understand I was not well”. She refers in the response to question 55 to the brother and stepmother making comments about how she washes her hands all the time as a result of her OCD. In question 56 she was asked “Was there any other incidents after your father died?” She replied “no not any other incidents. My father took me to the doctors to get depression medications, my father understood but they didn’t understand what I was going through”. She confirmed in paragraph 57 that she remained living with her brother and stepmother after her father’s death. She stated in response to question 58 that “life was not good because they were always arguing quarrelling calling me mad. I was going through a bad time and my brother brought me over here so I can freshen up and clear my mind”.
22. At question 59 of the Asylum Interview Record the appellant was asked when she had last had contact with her brother and stepmother. Her response was as follows:

“Not much occasionally when I go to my brother’s house they ring but he doesn’t really want to speak to me. They think that I might return to Bangladesh, they don’t really like me”.
23. The appellant was asked in question 60 whether she feared her brother and stepmother or they just did not like her. Her response was as follows:

“I fear them when I go to the bathroom and wash my hands they tell me off. I scream sometimes when I am asleep. They call me mad that I am screaming and shouting in my sleep, I am mentally not well”.
24. In response to question 72 of the Asylum Interview Record, the appellant stated:

“I don’t want to return back because I have got depression, I don’t get along with my brother and stepmother, everyone calls me mad there. I have no one to go to there. I have stayed here for such a long time where I have family and support”.
25. In question 73 the appellant was asked whether she could not go to stay with other family members in Bangladesh. Her response was as follows:

“My own brother is not giving me a place to stay, whereas they are cousins and aunties - how would they let me stay there?”

The appellant went on to state that her family in Bangladesh would not give her a place to live, would not check on her as her family in the UK did.

In response to question 74 she confirmed that her brother and aunt in the UK have been supporting her financially.

26. At the end of the interview the appellant was asked if she wished to add anything. She stated:

“Yes I have been in the country for thirteen years, I would like to remain. I have two brothers an auntie and uncle who look after me. I don’t want to return back to my stepmother and if I do they will call me made (sic) and send me to Pabana Mental Institute”.

The appellant also stated that:

“I don’t want to return to Bangladesh where I am not welcome I am depressed that will increase if I do”.

27. The evidence before the First-tier Tribunal was contained in the witness statements of the appellant, her brother and her aunt. In paragraph 11 of her witness statement dated 17 September 2018 the appellant stated:

“11. I found myself alone and in a hostile environment again. My eldest brother, [M], was settled in the UK. My youngest brother, [T], was away in Sylhet town studying at university. They both had always been very loving towards me like our father. But neither of them were there to help me.

12. Instead, my stepmother and middle brother, [X], shared the house with me. My stepmother never liked me but while my father lived she controlled her feelings towards me. When he died, she mocked and verbally abused me. [X] was more interested in swindling me out of my share of the house and made me aware that he didn’t want anything to do with me. [M] heard about how I was being treated and suggested that he sponsor me for a visit to the UK to stay with him for a holiday. My stepmother and [X] were pleased with the idea.

13. I arrived in the UK on a visit visa on 9 July 2005 and overstayed. I stayed with my immediate family here. I had no further contact with my stepmother or [X] but have heard through my brothers here that [X] has sold our land and has kept all the money he received instead of dividing it up between the four siblings”.

28. The appellant’s brother, [T], stated in his witness statement dated 17 September 2018 in paragraph 2:

“I moved away for my studies around 2000. I used to visit from time and time and as my father became very ill, my stepmother and my brother [X] used to threaten her that if she didn’t behave normally, she would be thrown out of the house. When my father died, they increased their bad behaviour towards her. They would taunt [MI] by calling her mad and that she was evil for not staying with her husband and that she was an unwanted burden. My sister became very withdrawn and very depressed. My brother who is in England and I thought that she needed to be with loving members of her family otherwise she was going to deteriorate further. We applied for her to visit the UK”.

29. The appellant's brother also stated in paragraph 4 of his witness statement concerning the brother in Bangladesh:

"My brother in Bangladesh has now sold all the land we all inherited from our father and he has kept all the money. We have no contact with him as he has misbehaved with our sister and with our finances. We have some distant relatives who live elsewhere in Bangladesh and they have told us that he now lives in rented accommodation in Sylhet town".

30. The evidence given on this matter by the appellant, her brother and her aunt, as recorded in the decision of the First-tier Tribunal, is set out above.

31. Having made adverse credibility findings on the appellant's claim that she would be seriously mistreated by her husband or his family or by her brother and stepmother to the extent that she could make out a protection claim, it was open to the First-tier Tribunal to find that the evidence concerning her ability to return to live with her brother in Bangladesh and receive support from him was not credible but that is not what the judge did here. He did not address the evidence of the appellant and her brother on this issue, that evidence being consistent and the appellant's evidence on this issue in the asylum interview being quite detailed. Also, the judge accepted that the brother in Bangladesh had taken all of the inheritance which was at least capable of being consistent with the appellant's evidence on difficulties in relations with the brother in Bangladesh. It is difficult to reconcile the finding that all of the inheritance had been taken by the brother in Bangladesh and the evidence of the appellant and her brother on how she was and would be treated by her brother with the finding in paragraph 10 that there was no evidence at all of any estrangement.

32. There was also no issue here of the appellant having some mental health problems that could form the basis of dislike from the brother and stepmother and their not wanting her to live with them. As above, in paragraph 8 the judge accepted that the appellant is a vulnerable witness. The First-tier Tribunal accepted in paragraph 12(ii) that the appellant suffers from depression.

33. This assessment of whether the appellant could return to live with her brother in Bangladesh or in some other way be offered sufficient support and protection by him was critical here where the country information before the First-tier Tribunal included material showing that life in Bangladesh as a single woman is difficult, even without the individual having mental health problems. The Country Policy and Information Note (CPIN) "Bangladesh: Women fearing gender based violence" dated January 2018 was before the First-tier Tribunal. Paragraph 4.7.1 of this document states :

"Several sources, consulted during the Home Office Fact-Finding Mission (FFM) to Bangladesh in May 2017, noted that it was difficult for single women to relocate, rent a property alone or find employment. ASK stated

'There are big problems with the social acceptance of single women, even for educated women who are working. There are also financial constraints. To live without male support is almost impossible. Bangladesh is a very family-orientated society. Even educated women are afraid to leave their families.'

The sources indicated that there may be exceptions in terms of access to employment for wealthy professional women, or those with family support, but that that renting a property alone would be difficult".

34. It was my conclusion that the decision of the First-tier Tribunal on whether the appellant would face very significant obstacles to reintegration in Bangladesh disclosed a material error on a point of law for the reasons set out above. I therefore found that the Article 8 ECHR decision had to be set aside to be re-made.
35. The parties before me agreed that in the event of an error of law being found I could proceed to re-make the appeal on the basis of the evidence before me.
36. Firstly, I must assess whether the evidence of the appellant and her brother of her being unable to return to live with her brother and stepmother in Bangladesh is credible. I begin that assessment by taking full account of the fact that the First-tier Tribunal made unchallenged findings that her claim of a threat from her former husband and his family or a threat of serious mistreatment from her brother and stepmother such that a protection claim was made out lacked credibility. I considered the appellant's evidence on being unable to return to live with her brother and the bullying treatment she received in the past when she did live with him carefully and in the context of the adverse credibility findings on her protection claim.
37. Having done so, it is my conclusion that the appellant's evidence on having difficulties with her brother and stepmother before she left Bangladesh and their being unprepared to have her return to live with them now was credible. Her evidence on the inability of her brother and stepmother to be able to tolerate and her OCD and anxiety was consistent and detailed. Her mental health problems were accepted by the First-tier Tribunal even if the level of care she requires was not. Her evidence was supported by that of her brother. As before, it was accepted that the brother in Bangladesh has also acted unfairly towards the other siblings regarding their inheritance.
38. Certainly, her relatives in the UK can be expected to send money to support the appellant in Bangladesh but the extract from the CPIN set out above indicates that financial independence is not sufficient to allow a single woman to live alone in Bangladesh. That is so even before the appellant's mental health issue are taken into account. The appellant's depression has been accepted and the evidence on her traits of OCD shown by repeated handwashing, needing to use tissues in order to touch

appliances such as light switches and high anxiety was set out consistently in the evidence of the appellant, her brother and her aunt.

39. It is therefore my conclusion that the appellant's circumstances on return meet the high threshold for a finding of very significant obstacles to reintegration and that she meets paragraph 276ADE(vi). Her claim under Article 8 ECHR is allowed.

Notice of Decision

40. The decision of the First-tier Tribunal discloses an error of law in the assessment under paragraph 276ADE(vi) of the Immigration Rules.

41. The Article 8 ECHR appeal is re-made as allowed.

Signed: 
Upper Tribunal Judge Pitt

Date: 5 March 2020