Upper Tribunal

(Immigration and Asylum Chamber) **Appeal number: PA/02270/2020 (V)**

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC **Decision & Reasons Promulgated**

On 13 April 2021 **On 23 April 2021**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

SJ

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

For the appellant: Ms Johnrose

For the Respondent: Ms R Pettersen, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. At the

conclusion of the hearing, I reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellant, who is a national of Bangladesh with date of birth given as 16.12.97, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 6.10.20 (Judge Curtis), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 7.2.20, to refuse his claim for international protection.

2. Permission to appeal was refused by the First-tier Tribunal on 10.11.20. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Kamara granted permission on 9.12.20, considering it arguable that, (a) between [31] and [40] of the decision the judge made a recurring reference to missing evidence, thereby imposing a requirement of corroboration "and arguably erred in concluding that its absence was detrimental to the appellant's claim"; (b) "entered into speculation and placed weight on immaterial matters; (c) "considered and rejected the medical opinion only after having arrived at negative credibility findings."

3. The Rule 24 response, dated 11.1.21, argues that pursuant to TK (Burundi) v Secretary of State [2009] EWCA Civ 40 (cited at [38] of the decision), the judge was entitled to take into account the fact that evidence which was or should have been readily available, had not been provided. It is submitted that the judge was also entitled to take into account and assess the credibility of the appellant's explanations for absence of evidence; for example, the claim that she could not prove contact with her family because the landlords who were supporting her refused to allow her to use her phone to reset her password. The judge was also entitled to take account of the inconsistency between the claim that her family was extremely strict and sending her outside her father's control of contact with males outside the family. The respondent also rejects the claim that the medical report was only assessed after a conclusion reached on the other evidence.

4. I have carefully considered the decision of the First-tier Tribunal in the light of the helpful submissions of both representatives and the grounds of application for permission to appeal to the Upper Tribunal.

5. I am not satisfied that the judge imposed a requirement of corroboration, as claimed. It is clear from a reading of the decision as a whole that a thorough assessment of the evidence has been undertaken by the judge. At [42] of the decision the judge reminded himself that the appellant only required to prove her case to the lower standard but remarked that the case presented by her "constituted only a 'skeleton framework'", referencing several key aspects in respect of which supporting evidence was not provided, "when it ought reasonably to have been so." Examples of such evidence are set out within the decision, some of which I have addressed below. The judge went on to consider the explanations for the absence of such evidence, finding

those explanations not cogent, which, together with the appellant's vague answers, led the judge to have "significant concerns as to the veracity of the core of the appellant's account."

6. However, I find it difficult to justify the judge's criticism of the appellant for the absence of some aspects of potential evidence; for example, the declining of her landlords to give evidence. Unless it had been shown that she controlled whether or not they were prepared to give evidence, it is unfair to hold their refusal against the appellant. Similar points may be made about at least some of the other elements of missing evidence.

7. One of the factors that causes me concern and which I spent some time addressing with the two representatives is the judge's concentration, particularly at [32] of the decision, on the appellant's living conditions in London and in particular the judge's apparent disbelief that if her parents were the strict Muslims the appellant claimed, they would not have consented to their daughter living in a property in which a single man also resided. As Ms Johnrose pointed out, there was no evidence that the parents were aware of these living arrangements and more significantly, this issue of concern was never raised by the judge with the parties during the hearing; it only appeared in the Tribunal's written decision. I also find it difficult to see how the judge justified this concern as undermining of the credibility of the claim that the appellant's parents would be hostile to her on return to Bangladesh as an unwed pregnant mother. It is implicit from the findings that the judge concluded that because the parents allowed the appellant to live in a home of former neighbours from Bangladesh in which a single young man also lived, the parents would welcome their daughter home, despite her illicit relationship resulting in pregnancy. Whilst Ms Pettersen resisted this as the implicit conclusion, she was unable to point to any other purpose of the judge devoting so much of the decision to this issue, one which was not raised by either party and was never part of either case. On the basis of the concerns as to living conditions in London, I am satisfied such a conclusion was a leap too far. I am satisfied that this foray was in error of law and sufficiently central to the overall credibility findings that the decision cannot stand and must be set aside for this reason alone.

8. Ms Johnrose also pursued the other grounds of appeal and there is certainly force in some of the points she made. For example, the judge found incredible that the appellant would be living in London when studying in Hamilton. In fact, as Ms Johnrose pointed out, the appellant was studying at the London Campus of the University of West Scotland. In rejecting the claim of threats made to her, the judge also criticised the absence of evidence of online communications such as Facebook Messenger, when at least some of the threats were made orally so that online material could not have assisted. Similarly, the judge criticises the absence of evidence of hospital admission during her pregnancy when the fact that the appellant was pregnant was never in dispute. Considering these issues together, in the round, I am

satisfied that the judge embarked on a consideration of a number of peripheral and immaterial issues, using negative findings made in respect of these issues to undermine the credibility of the appellant's claim. Whilst I accept that many aspects of the appellant's factual claim appear remarkably weak, if not lacking in credibility, I have to accept that the judge placed considerable reliance on matters that were either not raised as an issue at the hearing or which were immaterial to the core issues and therefore amounted to procedural irregularity and contributed to a decision made in error of law.

9. Ms Johnrose also pointed out that, perhaps because the judge was fixated on the peripheral issues referred to above, the core issues of risk on return were not engaged with; for example, how a single parent woman with an illegitimate child would be treated on return to Bangladesh, as addressed in SA (Divorced women – illegitimate child) Bangladesh Country Guidance [2011]. I find force in this submission and agree that the failure to address this issue amounts to an error of law.

10. In relation to the claim that medical evidence was not considered in the round, at [43] the judge accepted Dr Ghosh's evidence that the appellant has been diagnosed with depression and anxiety, for which psychological therapy is the appropriate treatment. It is clear from [44] of the decision that in considering the credibility of the appellant's claim to be at risk on return from her brother, the judge took into account the diagnosis of depression and anxiety. It is also clear from [40] and [41] of the decision that the judge considered the medical evidence when assessing the credibility of the claim that being hospitalised led her to admitting her pregnancy to her family. At the end of [40] the judge refers to the absence of other potentially supportive medical evidence, which had not been produced. As the medical evidence was accepted, it is difficult to see how the assessment of that evidence could have been adversely affected by negative credibility findings. It is necessary for a judge to set out the reasoning of a decision in a logical and organised way and that requires issues to be addressed in some form of order. It does not necessarily follow that anything flows from the particular order in which a decision is set out. The fallacy of this ground of appeal is the assumption that the judge only reached a conclusion on individual aspects of the evidence as it was being typed up into the decision. The formulation of a decision is the distillation of the judge's thought processes, setting out the reasoning for findings made. Nothing in the grounds or the decision demonstrates that the medical evidence was addressed only as an after-thought and rejected because of adverse credibility findings made.

11. Nevertheless, for the reasons set out above, particularly the foray or digression into the appellant's living circumstances in London, I find such material error of law in the decision of the First-tier Tribunal that it must be set aside to be remade. As the errors largely relate to the credibility findings, nothing can be preserved from the decision and it must be remade de novo. In the premises, the appropriate venue is the First-tier

Tribunal, in accordance with the Senior President's Practice Statement at paragraph 7.2

Decision

The appeal of the appellant to the Upper Tribunal is allowed.

The decision of the First-tier Tribunal is set aside.

The making of the decision in the appeal is remitted to the First-tier Tribunal to be remade afresh with no findings preserved.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 13 April 2021

Anonymity Direction

I am satisfied, having had regard to the guidance in the Presidential Guidance Note No 1 of 2013: Anonymity Orders, that it would be appropriate to make an order in accordance with Rules 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in the following terms:

> "*Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies to, amongst others, both the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings*."

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 13 April 2021