



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/10935/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 15 November 2017**

**Decision & Reasons
Promulgated
On 13 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

**SB
(ANONYMITY DIRECTION MADE)**

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and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Burrett, of Counsel, instructed by M & K Solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the Appellant may be put at risk solely because of her claim attracting publicity.
2. This is an appeal against the decision of First-tier Tribunal Judge Grimmett (“the judge”) dismissing the Appellant’s appeal against a decision of the Secretary of State refusing her application for asylum. Permission to

appeal was granted by Deputy Upper Tribunal Judge Chapman on 6 September 2017.

3. The background can be shortly stated. The Appellant is a citizen of Bangladesh whose date of birth is 4 May 1984. The Appellant's case is that for her to return to Bangladesh would place the United Kingdom in breach of its international obligations. She fears persecution from her ex-husband's family in Bangladesh because of the breakdown of her marriage in the United Kingdom as a consequence of the domestic abuse and rape she suffered at the hands of her ex-husband. The Appellant says that her husband's family are influential and powerful in Bangladesh and that the police have visited her family there with the aim of seeking to persuade her to withdraw the charge of rape against her husband in the United Kingdom.
4. The judge heard from the Appellant, her sister and a friend. The judge accepted the Appellant suffered significant domestic abuse at the hands of her ex-husband until she left him two years ago. The judge also accepted the Appellant was distressed and was receiving support and that she had suffered from past symptoms of depression. The judge identified inconsistencies in the evidence and concluded the Appellant had not been truthful about the contact she maintained with her mother or that her ex-husband's family members were threatening her family in Bangladesh. The judge further considered that the Appellant had failed to show that her ex-husband had influential family members "*in Pakistan*" [13] and noted that she had given a differing account of (i) the "*Pakistani police*" [17] attending her family home in Bangladesh at the request of her ex-husband's relatives and (ii) of her brother's arrest. Ultimately, in view of these inconsistencies the judge was not satisfied that the Appellant's husband had used his relatives or the police in Bangladesh to threaten her family there.
5. The judge considered the expert's view that the Appellant would be in difficulties in trying to secure protection from the authorities, but concluded that the Appellant did not need to secure protection or internally relocate as it was not accepted her family had been harassed by her ex-husband's relatives. While the judge further noted that there was a reference to the lack of mental health facilities "*in Pakistan*" [23] there was no medical evidence that the Appellant was currently suffering from any mental health problems.
6. The judge further concluded that the Appellant's Article 8 claim was not made out on the basis that (i) she did not meet the requirements of the Rules; (ii) she had no family life in the UK; (iii) any leave to remain previously granted was temporary and she had no leave since 2005 and

(iv) her private life was established while here on a temporary basis. Accordingly, the appeal was dismissed on all grounds.

7. The grounds of appeal, upon which permission was granted, concerned alleged errors of law on the part of the judge in his approach to credibility in light of the fact that the Appellant was a victim of serious abuse and trauma and failed adequately to assess her claim within the context of existing country conditions and her mental health problems. Other grounds focussed upon alleged errors by the judge in her overall assessment of the evidence and her assessment of proportionality which took no account of the accepted history of serious domestic violence.
8. In granting permission Deputy Upper Tribunal Judge Chapman further observed that: *"it is also of some concern, in respect of the requirement that cases be given "anxious scrutiny" that the Judge makes repeated reference to Pakistan rather than Bangladesh."*
9. The Respondent sought to defend the decision of the First-tier Tribunal in a Rule 24 response filed on 3 October 2017.
10. At the hearing both representatives made submissions. Mr Burrett in amplifying the grounds advanced submissions some of which I considered stretched the scope of the grounds too far. While I acceded to his application and granted permission on the additional points he raised, it is not necessary to traverse them as I formed the view from my reading of the papers and from listening to the submissions on behalf of the parties that, there was a more fundamental issue which is raised albeit opaquely in the grounds that Mr Burrett advanced than ought to be addressed first as it affects all that flows from it.
11. There are references in the papers to the Appellant's past mental health problems; the continuing distress caused by the past abuse from her ex-husband and her need for continuing support. It is a matter of record that there is no dispute about these facts that were accepted by the judge.
12. In my view, there were sufficient indicators when the matter was before the judge to place all concerned on notice that the Appellant was potentially a vulnerable witness such as to engage the **Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance**. That vulnerability arose from the Appellant's domestic circumstances as the guidance note recognises. The existence, relevance and application of this guidance note was not raised on behalf of either of the parties nor by the judge of his own motion.
13. I consider this to have been a significant oversight both generally and in the circumstances of the matters which were being determined. Much turned on credibility, and the judge was evidently influenced by apparent

inconsistencies in the Appellant's narrative of events on various occasions. It may be a different view would have been taken of inconsistencies in the evidence had the judge considered the extent to which vulnerability may have contributed to any discrepancy or lack of clarity.

14. Mr Burrett referred to *AM (Afghanistan) v. Secretary of State for the Home Department [2017] EWCA Civ 1123* in support of his submission that the failure to refer to and apply the guidance was a material error and Mr Jarvis relied *inter alia* upon the fact that the Appellant had been represented at the time (not by Mr Burrett) and that the representative had failed to identify how the guidance would have made a difference to the outcome. Nonetheless, I consider given the accepted facts of the Appellant's past and current state of distress that, had it been brought to the attention of the judge that the Appellant might properly have been a vulnerable witness, it is impossible to know whether the judge's findings would have been the same or not. It was noted that the guidance provides that if the issue of vulnerability is raised, a witness is to be treated as if he or she were vulnerable unless and until the contrary is proved.
15. I am of the opinion that the witness vulnerability point is indeed '*Robinson obvious*'. The decision of the Court of Appeal in *Regina v Secretary of State for the Home Department, ex parte Robinson [1997] EWCA Civ 3090* has become an oft-repeated mantra in this and other jurisdictions. In paragraph 37 of the judgment of the court it is stated:

"... it is the duty of the appellate authorities to apply their knowledge of Convention jurisprudence to the facts as established by them when they determine [asylum matters] and they are not limited in their consideration of the facts by the arguments actually advanced by the asylum seeker or his representative."

And at paragraph 39:

"If there is readily discernible an obvious point of Convention law which favours the applicant although he has not taken it, then the special adjudicator should apply it in his favour [...] Similarly, if when the Tribunal reads the Special Adjudicator's decision there is an obvious point of Convention law favourable to the asylum-seeker which does not appear in the decision, it should grant leave to appeal."

16. This principle applies with equal force to the First-tier and the Upper Tribunal as they are now constituted. Whilst it is unfortunate that the Appellant's representative did not raise the issue of the Appellant's vulnerability as a witness, there was sufficient material before the judge for the matter to have been raised of its own motion. No Appellant should be prejudiced or disadvantaged by an oversight on the part of his or her legal representative. Here the fairness of the proceedings was infected by a failure to follow the Joint Presidential Guidance Note. In the

circumstances I cannot be satisfied that the Appellant enjoyed a fair hearing. Further, I am reinforced in this conclusion and agree with the observations made by the Deputy Judge granting permission that there are obvious concerns as to whether the judge assessed the evidence with “anxious scrutiny” given the references to Pakistan rather than Bangladesh in what are not standard or stock paragraphs in the decision.

17. While Mr Jarvis made a valiant attempt to defend the decision in this and other respects, in the particular circumstances of this case, where the vast majority of the findings of the judge are predicated on his conclusions as to the Appellant’s credibility and where such conclusions were reached without reference to the Joint Presidential Guidance Note, the decision cannot stand and must be set aside. The entire matter needs to be decided *de novo* and must be remitted to the First-tier Tribunal for a fresh hearing before a different judge.
18. Since my conclusion on the vulnerability issue is sufficient to be dispositive of the appeal, it is unnecessary to determine any of the additional grounds advanced by Mr Burrett on behalf of the Appellant in advancing the appeal. I deliberately refrain from expressing any view on the matters raised as none of the findings are preserved and the complex history and background will be examined afresh at the rehearing.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal for a rehearing of the appeal by a judge other than Judge J Grimmett.

Signed

Dated 18 February 2018

Deputy Judge of the Upper Tribunal
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