



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04323/2015**

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 27 January 2016

On 12 February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**M A
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Meredith, Counsel, instructed by ATLEU
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Raynor (the judge), promulgated on 20 October 2015, in which he dismissed the Appellant's appeal on international protection issues, but allowed it to the limited extent that the Respondent's decision was not otherwise in accordance with the law.

2. In addition, the Respondent has appealed against the judge's decision to allow the appeal on that limited basis.
3. The appeal to the First-tier Tribunal was against the Respondent's decision of 27 February 2015, refusing to vary the Appellant's leave to remain and to remove him from the United Kingdom by way of directions under section 47 of the Immigration, Asylum and Nationality Act 2006.
4. The Appellant's claim had a number of legal strands, but in essence was based upon his account of being trafficked from Pakistan to the United Kingdom and the consequences thereof. The Appellant's case was initially processed through the National Referral Mechanism and as a result of a Conclusive Grounds decision in 2012 he was granted a year's Discretionary Leave. A further protection claim was made in 2013. The Respondent accepted most of the account. However, it was said that the Appellant had not been threatened by the 'host' family (the Q family), that no Convention reason was engaged, and that protection and/or internal relocation were available. Article 8 was said not to assist the Appellant.
5. On appeal the Appellant relied on the Refugee Convention, Humanitarian Protection, Articles 3, 4 and 8 ECHR, and the provisions of the Anti-Trafficking Convention.

The hearing before the judge

6. In a largely well-structured decision, the judge deals with the relevant issues in turn. At paragraph 49 he restates the Respondent's generally favourable view of the Appellant's credibility and accepts the account as to life in Pakistan, the manner in which he came to the United Kingdom, his treatment by the Q family, and his life in this country.
7. At paragraphs 59-66 the judge sets out why he does not accept that the Appellant was a member of a particular social group, with reference to AM and BM (Trafficked Women) Albania CG [2010] UKUT 80 (IAC) and SB (PSG - Protection Regulations - Reg 6) Moldova CG [2008] UKAIT 00002.
8. Paragraphs 67-68 reject the Appellant's claim to have been threatened by the Q family after he escaped from them.
9. The judge then finds that there was no risk of the Appellant being re-trafficked by the Q family or anyone else (paragraphs 69-72). It is said that because of his fairly poor state of health, no one would seek to exploit the Appellant in the future.
10. Paragraphs 73-81 deal with the issues of state protection and internal relocation on the basis that there was a risk to the Appellant in his home area. The judge concludes that both are available to the Appellant.

11. At paragraphs 83-89 the judge considers Articles 3 and 8. He finds that Article 3 would not be breached by removal. In respect of Article 8 it is said that although life would be difficult on return, paragraph 276ADE(vi) of the Rules was not satisfied and the claim also failed outside of the Rules.
12. The remaining section of the judge's decision addresses Article 4 and the Anti-Trafficking Convention. The decision of the Upper Tribunal in EK (Article 4 ECHR: Anti-Trafficking Convention) Tanzania [2013] UKUT 00310 (IAC) is cited. In light of the Presenting Officer's concession that the Appellant entered the United Kingdom lawfully and therefore did obtain a visa, the judge found that the Respondent had failed to comply with obligations/duties as regards ensuring that the Appellant had the opportunity of avoiding being trafficked to this country. These failures contributed to the Appellant's circumstances thereafter. The judge accepted (at least implicitly) that the Respondent's conduct once the Appellant was here had a bearing on his ability to return to Pakistan with dignity. There was a link between the Respondent's omissions and the Appellant having suffered in terms of accommodation, health and employment. There had been no consideration of whether the Appellant should be compensated for the breaches of obligations. On this basis, the appeal was allowed to a limited extent.

The grounds of appeal from both parties and the grant of permission

13. The Appellant's grounds of appeal take issue with all elements of the judge's decision as they relate to the protection and Article 8 claims.
14. The Respondent's grounds assert that the judge misdirected himself as to EK and failed to make adequate findings and/or give adequate reasons on to the Appellant's case.
15. Permission to appeal was granted to both parties by First-tier Tribunal Judge Andrew on 27 November 2015.

The error of law hearing before me

The Appellant's challenge

16. Given the nature of this appeal the hearing before me was fairly lengthy. This is no criticism of the representatives. Towards the end of Ms Meredith's submissions in support of her grounds, Mr Kotas accepted that there were material errors of law in the judge's decision and he acknowledged that the case should therefore be remitted to the First-tier Tribunal. In light of this stance (which I might say was both fair and realistic), I will set out fairly briefly the material errors that I have found to exist.

17. First, on the issue of the Convention reason I find that the judge erred in failing to approach the “distinct identity” issue on a correct footing. I agree with Ms Meredith’s skeleton (page 9) and her oral submissions that in effect the judge erroneously compared the position of women in Albania and Moldova with that of the Appellant (a male from Pakistan), and concluded (at least partly on this basis) that because factors that could not possibly apply the Appellant were absent (i.e. gender and country-specific social codes), the “distinct identity” limb was not made out. In addition, I find that the judge, whilst referring to unspecified “objective evidence”, failed to address it in sufficient detail and/or give adequate reasons for rejecting its relevance to the Appellant’s case.
18. Second, there has been procedural unfairness in respect of the credibility point taken against the Appellant on threats made by the Q family. A material consideration in the judge’s rejection of this aspect of the claim was that there was an inconsistency in the evidence (see paragraph 67(iv)). This inconsistency was a point taken by the Respondent in the reasons for refusal letter (see end of page 5). However, I note from paragraph 28 that the Presenting Officer stated that she was not relying on the inconsistency mentioned in the reasons for refusal letter. I accept Ms Meredith’s word that the credibility issue was not raised independently by the judge at the hearing. In turn, I find that the Appellant was not given a fair opportunity to address a point that had in effect been conceded by the Respondent at the hearing.
19. Third, the judge erred in his consideration of the risk of being re-trafficked. He failed to have any regard to paragraph 339K of the Rules and Article 4(4) of the Qualification Directive. This was relevant because the Appellant had been persecuted and/or the victim of serious harm in the past. There is also what appears on the face of the decision to be a contradiction between the finding in paragraph 71 that the Appellant was of little use to any potential re-trafficker, and the finding in paragraph 87 that he could undertake menial work (the very sort of work that a trafficker might subject an individual to). I conclude that relevant findings have not been taken into account at these two different sections of the decision.
20. Fourth, in assessing the state protection issue, the judge relies heavily on the decision in AW (Sufficiency of protection) Pakistan [2011] UKUT 31 (IAC). It is clear to me though that in paragraph 76 the judge has failed to explain what the relevant characteristics of the Appellant were as regards the actual availability of protection, or else has failed to provide adequate reasons as to why they made no difference to this case.
21. Fifth, in respect of internal relocation there is no adequate consideration of the Appellant’s own particular circumstances (relating to health, past experiences, familial support and the like) when assessing the reasonableness of moving elsewhere. In addition, the focus of the judge’s reasoning is on the Q family without any regard to the issue of re-trafficking by others throughout Pakistan.

22. Sixth, the consideration of Article 8 within and without the Rules is flawed in part because of the contradiction I have already mentioned concerning paragraphs 87 and 71. Further, there is inadequate consideration of the medical evidence (particularly as it relates to the Appellant's mental health) and his status as a former victim of trafficking.

The Respondent's challenge

23. Neither party was prepared to concede the correctness or otherwise of the judge's consideration of Article 4 and the Anti-Trafficking Convention.
24. Having considered the submissions of the representatives with care I find that there are material errors of law in respect of this issue.
25. First, it is clear to me that the judge placed weight upon the submission that the Appellant's return to Pakistan with dignity was (at least) jeopardised by the Respondent's failures (see paragraphs 96 and 98). However, as Ms Meredith acknowledged, there is a 'tension' between this position and that taken in respect of the Article 8 claim (see paragraph 87). As discussed previously, in my view the tension is in fact a genuine and material contradiction within the decision (and to this extent I also agree with paragraphs 21, 23 and 27 of the Respondent's grounds). Part of the problem here is the judge did not deal with the medical evidence in as much detail as he otherwise might have. This is a point relied on by Ms Meredith in respect of her challenges to the decision. With respect, it seems to me as though she cannot have it both ways, as it were. The findings of the judge in respect of Article 4 and the Anti-Trafficking Convention are materially undermined.
26. Second, it is not apparent to me on the face of the decision that the judge has found, or at least given reasons for finding, a causal nexus to exist between the Respondent's breaches and the Appellant's ill-health. Having looked at the medical evidence myself, it is not obvious that such a link was necessarily present (although it might have been). The existence of causation is relevant to the application of EK and the lack of clarity in the judge's decision is material.
27. I conclude that the two errors identified above cannot be separated out from the judge's reasoning as whole such that his overall decision on this issue remains sustainable.

Disposal

28. Having regard to paragraph 7 of the Practice Statement and the circumstances of this case, the appeal must be remitted to the First-tier Tribunal. Neither representative suggested otherwise.
29. This is a relatively complex case, and with that in mind I am issuing detailed directions (see below). In relation to factual matters, I am

specifically preserving the positive credibility findings at paragraph 49 of the judge's decision and the acceptance that the Appellant came to the United Kingdom in 2000 through lawful channels.

Anonymity

30. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make 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. This direction has been made in order to protect the Appellant from serious harm, having regard to the interests of justice and the principle of proportionality.

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.

Signed

Date: 9 February 2016

H B Norton-Taylor

Deputy Judge of the Upper Tribunal