



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

Appeal Number: AA/06052/2014

THE IMMIGRATION ACTS

**Heard at Newport
On 31st March 2016**

**Decision & Reasons Promulgated
On 15th April 2016**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**NM
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O James instructed by Asylum Justice

For the Respondent: Mr I Richards, Home Office Presenting Officer

REMITTAL AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the Appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

Introduction

2. The appellant is a citizen of Pakistan who was born on 3 September 1979. She arrived in the UK, together with her two sons, on 20 July 2013 with leave valid until 2 January 2014. Her leave duly expired and on 17 June 2014 she made a claim for asylum. That claim was based upon her fear of return to Pakistan because she had suffered domestic violence at the hands of her husband over a prolonged period. She feared that on return she and her children would be at risk from her husband.
3. On 7 August 2014, the Secretary of State refused the appellant's claim for asylum and humanitarian protection and under Article 8 of the ECHR. On that date, the Secretary of State made a decision to remove the appellant as an overstayer under s.10 of the Immigration and Asylum Act 1999.

The Appeal to the First-tier Tribunal

4. The appellant appealed to the First-tier Tribunal. Following a hearing on 10 July 2015, in a determination sent on 27 July 2014 Judge Frazer, dismissed the appellant's appeal on all grounds.
5. For present purposes, the only relevant decision relates to the appellant's international protection claim (on asylum grounds) that she (and her children) would be at risk on return of domestic violence by her husband.
6. Judge Frazer found the appellant not to be credible and rejected her account that she had previously suffered domestic violence and was, as a consequence, at risk on return to Pakistan. Judge Frazer gave a number of reasons at paras 24-34 for rejecting her account. He took into account, for example, that the appellant had not claimed asylum until a year after her arrival and that this damaged her credibility by virtue of s.8(2) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (the "2004 Act") (see para 34). In addition, he took into account that the appellant had not produced mobile phone records to support her claim that her husband had threatened her on the telephone and had not given a satisfactory explanation of how he had obtained her phone number (see para 29). Further, the Judge did not consider it plausible that the appellant's husband had laid an FIR against her in Pakistan (see para 30).
7. In paragraphs 25-28 of his determination, the Judge doubted the appellant's credibility because of information given in her visa application which was now inconsistent with her claim: in particular that she had four rather than two children and that her visitor application had been supported by her husband which was inconsistent with her claim to be escaping from a violent husband without his knowledge and consent. Judge Frazer said this:
 - "25. ... She came to the United Kingdom on a tourist visa, the application for which is in the Respondent's bundle. On her application, the Appellant had stated that she had 4 children and had filled out the

name and date of the birth fields for each of those children. She declared that two of the children would not be travelling with her. She declared that she was dependent on her husband's income and that her husband would be funding her trip to the United Kingdom. As part of her application the Appellant submitted a letter from her husband on paper headed 'Savour Rice Mills' wherein he declared that he wished to support his wife and children during their visit to the United Kingdom. He appended a number of documents relating to finances to the letter in support.

26. By contrast in her asylum interview the Appellant said that she only had two children named Abdullah and Ahmad, the two children that she had with her in the UK. The Appellant denied that the other children named on the visa application form, Fahmad and Iman, were the names of her children. It was put to the Appellant that it seemed odd that the agent would put the names of two additional children on her visa application, especially as it stated that they were not travelling with her, to which the appellant offered no comment. I have taken the absence of a response into account under s.8(3)(e) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.
27. In both her interview and in her evidence to the Tribunal the Appellant stated that her husband did not know that she was leaving the country and taking the children out of the UK. She said that she had raised money by selling jewelry and provided some evidence of receipts to support this. This is inconsistent with the document in support from the husband provided for her visa application which purports to support the Appellant during her visit to the United Kingdom. When it was put to the Appellant that it was her husband who was financial sponsor she said that she was unaware of what was put in the visa application form as a friend of her late father filled it out on her behalf.
28. The very core of the Appellant's account is that she had taken out a visa to escape her violent husband without his knowledge and consent and it was this very issue that had made him so angry. The visa application does not bear this out at all. It is evidence of a mother who has taken two of her children away with her, leaving two behind (presumably with the violent husband) and who has been supported in so doing by the very husband she is alleging has caused her to flee. She has offered no explanation for why the agent has included such details about her family and a letter of support from her husband which is so inconsistent with the core of her account."

8. In the result, as I have already said, the Judge reached his "primary conclusion" that the appellant's account was not credible and that the "inconsistencies went to the very core of her account" and "did not have the ring of plausibility" (see para 34).

The Appeal to the Upper Tribunal

9. The Appellant sought permission to appeal to the Upper Tribunal on the basis that the Judge's credibility finding was flawed since he had failed to take into account the appellant's explanation that the visa application form had been completed on her behalf by a friend of her father's (an

agent) and she had no knowledge of what was contained within it including the perceived inconsistent information with her claim.

10. Permission was initially refused by the First-tier Tribunal but on 5 October 2015, the Upper Tribunal (UTJ Bruce) granted the appellant permission to appeal on the following grounds:

“It is arguable that the determination fails to address specific evidence given by the Appellant about her visa form. At paragraph 28 the determination states that she gave “no explanation” as to why the biographical details on the VAF are markedly different from the account she now advances: It is arguable that the First-tier Tribunal has here overlooked paragraph 6 of the Appellant’s witness statement and the answers given at Q3-8 of the asylum interview.”

11. Thus, the appeal came before me.

The Submissions

12. On behalf of the appellant, Mr James submitted that a narrow point raised, namely that the Judge’s reasoning in paras [26]-[28] of his determination could not stand in law.
13. First, Mr James submitted that it was simply wrong for the Judge to state in para 26 that the appellant had not offered any comment of the fact that her visa application (contrary to her case) identified that she had four children. Mr James submitted that in her interview (at B6) the appellant had been asked about this and had explained that the form had been filled in by another person and he may have included the extra children but they were not her children. In response to a question as to why an agent would do this, the appellant replied that she did not know. Further, when it was put to her that it was odd for an agent to do this, she responded that she could not say anything about that. Mr James relied upon these answers at Questions 7-9 of her asylum interview and submitted that the Judge was, therefore, wrong to apply s.8(3)(e) of the 2004 Act which states that a decision-maker should take into account as damaging of credibility a person’s “failure without reasonable explanation to answer a question asked by a deciding authority”. There had been no failure to answer any question.
14. Secondly, Mr James submitted that in relying upon the inconsistencies between the information in the visa application and her account in her asylum claim the Judge had not only failed to take into account her explanation (that she was not involved in filling out the form) in her interview but also in paragraph 6 of her witness statement dated 8 July 2015 (at page 2 of the appellant’s bundle).
15. Mr James submitted that these errors were material to the Judge’s credibility finding which could not be sustained on the basis of his other reasons, in particular her failure to produce mobile phone records.

16. On behalf of the Secretary of State, Mr Richards submitted that the essence of the Judge's determination was that he did not believe the appellant's account. Mr Richards said that there was no explanation as to why the details had been wrongly given in the visa application form even if that had been done by an agent. The Judge was entitled to expect an explanation from the appellant and to take an adverse view if none was given. Further, he pointed out that the Judge had been entitled to rely upon the year's delay after arriving in the UK before the appellant claimed asylum by virtue of s.8 of the 2004 Act and had given ample reasons overall for his conclusion.

Discussion

17. There is no doubt that the Judge fell into error in paragraph 26 in applying s.8(3)(e) of the 2004 Act in considering, as damaging of the appellant's credibility, that she had failed without reasonable explanation to answer a question asked by a deciding authority. In relation to the questions at interview directed to there being four children named on her visa application, the appellant did provide an answer. It was not a "no comment" response; it was that the agent had completed the form and that she had no idea why he had included two children who were not hers. Section 8(3)(e) is directed at an individual's failure to provide any response to a question rather than an individual who provides a response which, in the Secretary of State's view, is inadequate.
18. In addition, I accept Mr James' submission that the Judge in paragraphs 26-28 has failed to engage with the appellant's explanation of why the evidence she was now giving was inconsistent with that obtained in her visa application. In relying on the inconsistency, it was incumbent upon the Judge to engage and grapple with the appellant's explanation and to reach a reasoned finding as to whether he accepted it or not. If he accepted the explanation, the inconsistencies might well be irrelevant or, at least, of much less weight in the credibility assessment. Only if he rejected her explanation could those inconsistencies tell against the truthfulness of her account.
19. Finally, a matter raised in the grounds but not directly referred to by Mr James in his oral submissions, concerns the Judge's reasoning in paragraph 28: in particular the final sentence where the Judge states that the appellant has offered no explanation why the agent would have included details of her family which were false and a letter of support from her husband. The Judge clearly took this into account in assessing her credibility and, it would appear from his conclusion in paragraph 34, in effect, he considered the circumstances of the appellant's visa application not to have the "ring of plausibility" if she were fleeing domestic violence by her husband. There is, with respect to the Judge, a rather obvious reason why such information might be included in a visa application in any circumstances. To demonstrate support and continued roots in Pakistan is relevant in assessing the bona fides of a visit. The information could have been included for that reason even if the appellant has previously suffered

domestic violence and feared it in the future. Some matters which defy common sense can entirely appropriately described as implausible but, such a characterisation is improper if a given the set of circumstances or behaviour may be consistent with more than one explanation (see e.g. *MM* (DRC - plausibility) Democratic Republic of Congo [2005] UKIAT 00019 at [20]-[23]). That was, in my judgement, the position in this appeal at least to the extent that without providing a substratum of reasons it is unclear why the Judge considered that there was, in effect, only one proper explanation of the inconsistencies arising from the appellant's visa application form.

20. For these reasons, the Judge erred in law in reaching his adverse credibility finding. I do not accept Mr Richards' submission that these errors are immaterial. I accept that the Judge gave a number of reasons for rejecting the appellant's credibility, including the delay in claiming asylum, the failure to produce mobile phone reports, records of claimed threatening calls by her husband and the unsatisfactory explanation as to how her husband obtained her phone number. However, reading the Judge's reasoning as a whole I am unable to conclude that without the reasoning contained in the flawed paragraphs 26-28 of his determination the Judge would necessarily have reached the same conclusion on credibility. In my judgement, the adverse view he took of the appellant based upon the information provided in the visa application form was a material factor leading him to his adverse finding.

Decision and Disposal

21. For these reasons, the First-tier Tribunal's decision to dismiss the appellants appeal on asylum grounds involved the making of a material error of law.
22. That decision is, accordingly, set aside and must be remade.
23. Given that the Judge's credibility finding cannot stand and that, as a result, the appellant's appeal has to be determined *de novo*, having regard to para 7.2 of the Senior President's Practice Statements the nature and extent of fact finding required makes it appropriate to remit this appeal to the First-tier Tribunal to be heard *de novo* by a Judge other than Judge Frazer.

Signed

A Grubb
Judge of the Upper Tribunal

Date: