Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/11637/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decisions and Reasons Promulgated**
On 11 March 2016	**On 21 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

PR

(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr J Parkinson, Senior Home Office Presenting Officer
For the Respondent: Mr S Chelvan, counsel instructed by Hackney Law Centre

DECISION AND REASONS

1. This is an appeal against a decision of FTTJ Housego, promulgated on 22 December 2015.

2. Permission to appeal was granted on 21 January 2016 by FTTJ Ransley.

Background

3. The respondent arrived in the United Kingdom during February 2010 with

leave to enter as a Tier 4 migrant. She was granted further leave to remain on the same basis and applied for asylum during February 2015.

4. The basis of the respondent's asylum claim is that she was, for many years, a victim of domestic abuse at the hands of her husband, both in Sri Lanka and the United Kingdom. She also feared retribution at the hands of her husband's family in Sri Lanka. In essence, the respondent first obtained an ex parte non-molestation order against her husband in October 2013 and in August 2015 her husband was convicted of crimes of violence against her in the United Kingdom.

5. The Secretary of State accepted the respondent's nationality and that she was a victim of domestic violence but did not accept that there was a Refugee Convention reason apparent in this case. Nor was it accepted that she could not either obtain a sufficiency of protection in Sri Lanka or relocate to avoid non-state agents.

6. The First-tier Tribunal Judge concluded that the respondent was a refugee and in that he relied heavily on the Secretary of State's Operational Guidance Note. He also found that she was entitled to a grant of Humanitarian Protection and that she was at risk of ill-treatment coming within Article 3 ECHR.

Error of law

7. Permission to appeal was sought firstly; on the basis that the FTTJ had materially misdirected himself as to particular social group, which he considered to be "*divorced single women*," said to be a contradiction in terms because the term "single" implies unmarried, which is not the same as divorced. Furthermore, it was argued that "*no documentary evidence of a decree nisi seems to have been adduced*" and therefore the FTTJ's "*assumption*" that the respondent would obtain a decree absolute was said to be, "*speculative in the extreme*." Secondly, it was said to be trite law that the FTTJ erred in allowing the appeal both on asylum and Humanitarian Protection grounds.

8. The FTTJ granting permission considered that it was arguable that the FTTJ erred in finding that the respondent belonged to a particular social group, that described as divorced single women; that the FTTJ erred in finding that the respondent was divorced when "*she had provided no documentary evidence of a decree nisi or a decree absolute"* and that the FTTJ erred in relation to allowing the appeal on a mutually exclusive basis. FTTJ Ransley concluded as follows;

> "The Judge's Decision has been shown to involve arguable errors of law that might have made a material difference to the outcome of the appeal. Permission is granted. "

9. On 8 February 2016, those representing the respondent sent a Rule 24 reply by facsimile to the Upper Tribunal, copied to Mr Dewison of the

Special Appeals Unit. That reply was prefaced with a request for a "senior tribunal" to be convened in order to "*determine and provide guidance on the documents which firstly should be before the Respondent, when drafting grounds of appeal and secondly, be before the Tribunal when determining whether an application for permission to appeal should be granted.*"

10. The Rule 24 reply argued that Mr Dewison, who drafted the grounds, had "*deliberately misled*" the Tribunal with respect to the grounds pleaded or, in the alternative, "*acted negligently and unreasonably*" in drafting the grounds. A question as to what material was before the FTTJ granting permission was also raised.

11. In relation to the grounds of appeal, it was argued that it was trite law that gender amounts to a Particular Social Group and that in relation to the sub-classification, the appellant was both divorced and single, in that she had not re-married. Reference was made to the OGN considered by the FTTJ, which considered women in the respondent's position to be refugees.

12. With regard to the ground that there was no evidence that a decree nisi was granted, the Rule 24 reply made reference to [3] of the decision and reasons, where the FTTJ stated that it was granted on 28 September 2015; that the respondent had applied for a decree absolute and more than six weeks had elapsed since her application. It was argued that the decree nisi was enclosed in the appellant's bundle before FTTJ Housego and that both Mr Dewison and the FTTJ granting permission had fallen into the same error of not considering the material on the file. The second ground was described as unarguably immaterial and academic. Finally, the grounds asked the Tribunal to seriously consider costs to be awarded against the Secretary of State and the possibility of wasted costs against Mr Dewison.

The hearing

13. When this matter came before me, Mr Chelvan submitted a schedule of Controlled Legal Representation costs calculated at *inter partes* rates from 4 January 2016 as well as his own professional fees for work undertaken on the respondent's behalf since the same date.

14. Mr Parkinson advised me that he had been instructed to proceed with the application as well as to resist costs. He briefly argued that there was inconsistency in the FTTJ finding that the appellant was both single and divorced; that there was no evidence before the FTTJ that the appellant was divorced and there was no reference to any decree nisi in the decision. Mr Parkinson stated that ground 2, the Humanitarian Protection point, was both irrelevant and immaterial.

15. Mr Chelvan drew my attention to item 6 in the appellant's bundle, which he said was before the FTTJ. I looked at the copy of this bundle on the IAC case file, which, as I advised the parties at the hearing, showed that the

Decree Nisi was certainly before the FTTJ. Mr Chelvan also argued that the appellant's evidence was that she had applied for the Decree Absolute and this had been issued on 17 November 2015, albeit she had not received it until after the hearing, which took place on 14 December 2015. I would add that the Decree Absolute formed part of the respondent's bundle produced for the hearing before me.

Decision on error of law

16. I decided that the FTTJ made no material error of law and upheld his decision for the following reasons.

17. In relation to the issue of the refugee Convention reason, the Secretary of State's OGN of July 2013 states, inter alia, as follows;

> "Where a Sri Lankan woman is able to show that she faces a real risk of gender-based violence amounting to torture or inhuman or degrading treatment is unable, or unwilling through fear, to access protection and where internal relocation is unduly harsh, a grant of refugee status would be appropriate as a member of a particular social group."

18. That the aforementioned OGN was relied upon by the Secretary of State's representative during the hearing is apparent from [31] of the decision. Therefore, notwithstanding what was said in the reasons for refusal letter, the Secretary of State's guidance to caseworkers is that women in the respondent's position are members of a particular social group. No issue is raised as the FTTJ's findings as to the respondent's inability or unwillingness to access protection or on internal relocation. It is also well established that gender alone fits within the Convention reason in question. Accordingly, the FTTJ did not err in his overall finding or on the sub-category concerned.

19. As indicated above, the respondent's Decree Nisi was contained in the respondent's evidence before the FTTJ. It remains on the IAC case file and was referred to at [19] of the decision and at [3], the FTTJ recorded that the decree nisi was granted on 28 September 2015. Accordingly, the grounds were misconceived in asserting that there was "*no documentary evidence of a decree nisi*" being adduced.

20. I concur with the parties as to the immateriality of the FTTJ allowing the appeal on both asylum and Humanitarian Protection grounds.

21. The Secretary of State has, therefore, not satisfied me that there was any error of law in the decision of the First-tier Tribunal capable of affecting the outcome.

22. It is troubling that the respondent, who is an exceptionally vulnerable person, has been put through the unnecessary distress of a further hearing having succeeded at the First-tier. In this, I refer to her victim impact statement dated 9 March 2016. There are indeed issues to be

explored in relation to the fact that the grounds gave the distinct impression that the Decree Nisi was not before FTTJ Housego and whether if the true position had been put before FTTJ Ransley, permission would have been granted.

23. At the hearing, Mr Parkinson attempted to seek further instructions on the costs issues, without success. I therefore declined to hear oral submissions from Mr Chelvan and adjourned the issues of whether the costs should be awarded against the Secretary of State and/or the Secretary of State's representative to a further hearing in respect of which I will give directions.

24. The Secretary of State is also put on notice that if she unsuccessfully resists the costs order then she may well face paying the respondent's costs of the further hearing.

Summary of Conclusions

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

2. The issue of whether and to what extent the Secretary of State and/or her representatives must bear the respondent's costs is to be considered at a further hearing in respect of which directions set out below shall apply.

Anonymity

An anonymity direction was made by the FTTJ and I consider it appropriate that this be continued and therefore make the following anonymity direction:

"Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) 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. "

Directions with respect to the adjourned hearing to consider costs

1. The matter to be listed on the first available date (before any judge) after 28 days for the convenience of Mr Chelvan, with a time estimate of 1.5 hours, for the following issues to be addressed:

    a. Whether the Secretary of State shall be ordered to pay all or part of the respondent's costs incurred in connection with the appeal before the Upper Tribunal; and/or whether the Secretary of State's representatives shall be ordered to pay all or part of the respondent's costs incurred in connection with the appeal before

the Upper Tribunal;

b. The summary assessment of the amount of any such costs.

2. Within 7 days of these directions the respondent shall file and serve an amended schedule of costs to include an estimate of future costs to include the costs hearing.

3. Within 21 days of the issue of these directions the Secretary of State and/or her officers shall file and serve witness statements together with any evidence in support in response to the respondent's application for costs; showing cause why they should not be ordered to pay all or part of the respondent's costs incurred in connection with the appeal before the Upper Tribunal.

4. Within 28 days of the issue of these directions the respondent shall file and serve any further evidence and a skeleton argument.

5. If either party fails to comply with these directions within the time period given, they will be deemed to be no longer resisting the application for costs or no longer seeking costs as appropriate.

Signed Date: 12 March 2016

Deputy Upper Tribunal Judge Kamara