



IAC-FH-AR-V1

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

Appeal Number: PA/00821/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 8 February 2016**

**Decision & Reasons Promulgated
On 24 February 2016**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

[J K]

(~~ANONYMITY DIRECTION NOT MADE~~)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Khan, Counsel, instructed by Universal Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND FACTS OF THE CASE

1. The Appellant, who was born on 5 January 1980, is a national of Bangladesh. It is her account that in 2002 she was raped by distant relative of her mother's. She was only able to name him as [R]. Her parents and herself did not report this incident to the authorities in Bangladesh.

2. In 2007 she worked as a primary school teacher for about a year. She then moved to Sylhet to study and, whilst she was there, she was raped by [R] in December 2008, January 2009 and June 2009. She says that her parents had wanted her to marry this man and he had wanted to marry her but they deferred permission until she had completed her studies.
3. On 16 January 2011 the Appellant entered the United Kingdom as a Tier 4 Student. She applied for further leave on 31 July 2012 but this was refused on 6 October 2012 on the basis she had not passed an appropriate English language test. She did not appeal against this decision. She remained here without leave and she was encountered by the Immigration Service working illegally on 25 May 2015. She was detained and refused temporary admission on 28 May 2015. Her solicitors submitted a human rights application on 5 June 2015. This was refused and certified on 24 June 2015. In this application she did not mention her fear of [R].
4. The Appellant claimed asylum on 6 July 2015 saying that she feared returning to Bangladesh, as a woman, because she would be once again assaulted by [R]. Her asylum interview took place on 4 August 2015 in which she disclosed details of her ill-treatment by [R]. On 7 August 2015 she saw a doctor at Yarl's Wood and repeated her account to her. Her application for asylum was refused on 12 August 2015 and she appealed against this decision on 25 August 2015.
5. First-tier Tribunal Judge Kaler dismissed her appeal on 7 October 2015 and the Appellant appealed against this decision on 21 October 2015.
6. Her main ground of appeal was that the First-tier Tribunal Judge had not mentioned the Rule 35 report by Dr Rebecca Ward and she was granted permission on this point on 28 October 2015 by First-tier Tribunal Judge Lewis.

ERROR OF LAW HEARING

7. The Appellant's counsel said that he would rely on the reasons give by First-Tier Tribunal Judge Lewis when granting permission. In reply, the Home Office Presenting Officer submitted that the contents of the doctor's report derived from what she was told by the Appellant and were self-serving.
8. He also noted that at paragraph 10 of her decision First-tier Tribunal Judge Kaler had stated that she had taken into account all of the documents in the Respondent's Bundle, which included the report by Dr. Ward. At paragraph 21.v of her decision she also took into account the fact that the Appellant had failed to mention any incident of torture when she was first questioned by medical staff at Yarl's Wood. He then submitted that the First-tier Tribunal Judge's findings at sub-paragraphs 21.i and 21.ii were open to her on the evidence before her. He added that taking the evidence as a whole the Judge had not found the Appellant's account credible and that there was no material error of law in her decision.

9. The Appellant's counsel then replied and submitted that an oblique reference to Dr. Ward's report was not sufficient. It mentioned torture and did not find any inconsistencies or contradictions in the Appellant's account. He submitted that First-tier Tribunal Judge Kaler should have explained why she had not given weight to Dr. Ward's report. In particular, the consistency of the account given to Dr. Ward with the Appellant's earlier account of her rapes needed to have been taken into account.
10. This is a narrow ground of appeal but on balance it is my view that in an asylum appeal anxious scrutiny has to be applied to all the relevant information and evidence before a First-tier Tribunal Judge.
11. Dr. Ward went no further than saying that the Appellant may have been tortured. She did not notice any scars on the Appellant's body. She just noted a small patch of discolouration likely to be an old abrasion or bruise. She does not attribute that to anything and it is not clear from Dr. Ward's notes whether she thought the Appellant came straight from Bangladesh shortly before claiming asylum. Although, it sounds like she did from the manner in which she recorded her discussion with the Appellant. What the Appellant said to Dr. Ward did not raise any new points apart from her saying that she was having nightmares.
12. This report taken together with the rest of the evidence would not necessarily have meant that First-tier Tribunal Judge Kaler would have reached a different decision. However, as was said, by Counsel for the appellant, Dr. Ward's report records the Appellant stating that there were four incidents; two of which involved a physical attack and two of which involved him threatening to expose photographs of her. I find that this does impact on the findings made by First-tier Tribunal Judge Kaler at paragraphs 21(ii) where she found that the Appellant had given different accounts of whether there were two or four incidents.
13. That is the main impact of the failure to take into account this report. So on a very narrow basis I find that there was a material error of law in the First-tier Tribunal Judge's decision.

DECISION

1. The Appellant's appeal is allowed.
2. The Appellant's appeal is remitted to the First-tier Tribunal for a *de novo* hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Kaler.

Signed

Date 18 February 2016

Nadine Finch
Upper Tribunal Judge Finch