Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/02086/2017**

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 23 October 2017	**On 25 October 2017**

Before

Deputy Upper Tribunal Judge Pickup

Between

FA
[Anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr J Holt, instructed by Wimbledon Solicitors
For the respondent: Mr C Bates, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge McAll promulgated 16.6.17, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 9.2.17, to refuse his protection claim.

2. The Judge heard the appeal on 2.6.17.

3. First-tier Tribunal Judge Gillespie granted permission to appeal on 12.7.17.

4. Thus the matter came before me on 23.10.17 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance, I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision of Judge McAll should be set aside.

6. The relevant background can be summarised as follows:

7. The appellant's case is that she met her husband at college in Bangladesh in 2007. They developed a relationship which they kept secret, knowing that their respective families would not approve. Despite that opposition, on 14.2.08 she accepted MA's proposal of marriage. MA came to the UK to study in 2009. In 2010, the appellant was informed by her family that they planned an arranged marriage for her. MA, who was at the time still in the UK, had his family propose their marriage to her family, but the suggestion was repeatedly rejected. When her family discovered the relationship, she was abused and assaulted by family members on a number of occasions. The appellant left her family home and in secret married MA in December 2010. MA returned to the UK in January 2011 and the appellant joined him here in February 2012, on the basis of being a dependant on his student leave.

8. Her leave was subsequently extended to 2014. However, a further in-time application was refused in July 2015, so that she had no valid leave after December 2014. In August 2016 she sought asylum, the refusal of which on 9.2.17 was the subject of the appeal before the First-tier Tribunal on 2.6.17.

9. The asylum claim was framed on the basis that if returned to Bangladesh, she and her family would be murdered by her family and that as her father is a person of influence and connect there is no safe place to which she could relocate.

10. Immediately prior to the commencement of the appeal hearing, the respondent served on the appellant a bundle containing documents relating to a 2011 visa application and the subsequent appeal against refusal. This evidence comprised material that had previously been served on the Tribunal for the 2011 appeal and thus, it was argued by the respondent, the appellant would or should have been familiar with the contents.

11. The material served included the decision of Judge Blum, dealing with the 2011 appeal. That judge found that the appellant and MA had entered into an arranged marriage, agreed by their respective families. The evidence relied on by Judge Blum included a letter from the appellant which explained that their marriage was arranged and that she and her husband had not communicated prior to his return to Bangladesh on 24.12.10 and their marriage on the same day. The judge also heard from MA, adopting his signed witness statement, in which he asserted that their marriage was

arranged by their families and took place on the same day he returned to Bangladesh from the UK, and the family arranged everything for the ceremony.

12. MA's statement for the 2017 appeal was consistent with the asylum claim summary set out above, but in oral evidence before Judge McAll the 2011 statement was put to him. In response, he suggested there was a mistake in the statement. He was given a warning about self-incrimination but elected to answer the questions, and suggested that the mistake was the assertion in the 2011 statement that it was an arranged marriage. He went to assert that the assertion was false had been fabricated. Ultimately, Judge McAll made adverse credibility findings and concluded that the marriage had been arranged as asserted in 2011 and that there was no hostility between the families as had been alleged for the purpose of the asylum claim.

13. In essence, the primary ground of appeal is that the appellant was the victim of procedural unfairness in the refusal of the First-tier Tribunal Judge to grant the adjournment requested on the date of the appeal hearing.

14. What happened at the hearing in relation to the adjournment request is set out in detail between [5] and [19] of the decision of the First-tier Tribunal and is not factually challenged by the appellant. Judge McAll set out the submissions made, the law considered, and the reasons for refusing the adjournment request.

15. Mr Holt's argument before the First-tier Tribunal and before me is first that the production and admission of the new evidence was in breach of Rule 24 of the 2014 Tribunal Procedural Rules, which requires the respondent to notify the Tribunal and appellant if it is intended to change or add to the grounds or reasons relied on in the RFR. Mr Holt pointed out that at [27] of the RFR the Secretary of State found the appellant's asylum factual account internally consistent, but little weight was attached to documents purporting to demonstrate animus between herself and her parents.

16. As it had not been possible to verify her family's claimed view of the marriage, this part of the claim was addressed under the benefit of the doubt provisions under paragraph 339L of the Rules, dealt with at [32] of the RFR, where section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 was also considered.

17. Judge McAll considered the argument and the procedural rules in detail, but concluded that whilst the respondent cannot refuse a protection claim based solely on s8 issues, that was not what the Secretary of State did in this case, but rather considered credibility in the round including having regard to s8 issues.

18. In relation to a change or addition to the grounds for refusal set out in the RFR, Judge McAll concluded that ultimately the Secretary of State found the appellant's claim not credible and as the 2011 material related to credibility, it did not fall foul of Rule 24(2). In the alternative, the judge

relied on Rule 6(2)(a) to waive the requirement to serve written notice, because the material served was evidence of which he was satisfied that the appellant and her witness must have been fully aware. That was a finding open to the judge and for which cogent reasons have been provided. Thus, the material was admitted and the judge went on to make findings and conclusions including those summarised above, leading to the dismissal of the appeal.

19. In granting permission to appeal, Judge Gillespie considered the refusal an arguable error of law when "new and unforeseen evidence" was produced by the Secretary of State at the outset of the hearing, which "unfairly prejudiced" the appellant and embarrassed counsel in the presentation of the case for the appellant, so that it may have materially affected the outcome of the appeal.

20. Mr Holt, who acted for the appellant at the First-tier Tribunal appeal hearing, told me that although he took advice from the Bar Council, he had concluded that he was not embarrassed and was able to continue to represent the appellant, and continued to do so before me. The witness was, at Mr Holt's request, warned about self-incrimination, but chose nevertheless to answer the questions put to him about the 2011 statement. Neither of these points add anything to the error of law assertion.

21. I found little merit in the submission of Mr Holt that the evidence should not have been admitted. It was clearly highly material and relevant to the determination of the asylum claim. If "a statement" was required under Rule 24(2), there is nothing to suggest that it could not have been given there and then, on the day. It may be that the Rule is intended to 'crystalise' the respondent's case, preventing what has sometimes been referred to as 'mission creep.' The only valid complaint here could be in relation to the late service of the 2011 material on the basis that it unfairly prejudiced the appellant's case. There is no doubt that this material would ultimately have to see the light of day in the appeal hearing. It does not assist Mr Holt's argument to stand on ceremony and demand as a point of principle that unless there was some form of written statement the evidence should not have been admitted.

22. What Judge McAll did was to give the appellant ample time to give instructions to Mr Holt, putting the case back for 3 hours. Given that the essential facts contained in the late-served information must have been known to the appellant and MA, this was more than generous. Ultimately, the appellant and MA would have to grapple with the stark inconsistency between the asylum claim version of their marriage and that presented during the appeal in 2011. It was open to them to say, as MA did, that the 2011 assertion of an arranged marriage was not true and that it was done to protect the appellant, because a 'love marriage' is not accepted in Bangladesh. And it was open to her to say, as she did, that she was unaware of the contents of the 2011 statements and assertions about the nature of the marriage.

23. Having heard and carefully considered Mr Holt's submissions, I fail to see what real prejudice befell the appellant that was not already inevitably going to arise the inconsistency between the asylum claim as mounted and the way in which the case was presented in 2011. There is no evidence before me that a longer adjournment would have be of any benefit to the appellant; as stated above, ultimately, she would have to grapple with this inconsistency. Mr Holt suggested that she would have been able to obtain independent advice, but that does not seem to be material, as he elected to remain with the case and was not professionally embarrassed.

24. Mr Holt also suggested to me that an adjournment would have allowed the appellant to obtain evidence as to who completed the form in 2011. However, even now the appellant has not obtained any evidence from the 2011 application and appeal to present in any Rule 15(2) application to exculpate her and demonstrate that the adverse credibility findings were unfairly made. On the basis suggested by Mr Holt, the request for an adjournment in the First-tier Tribunal would have been no more than a fishing expedition to see if something, anything, could be found to help the appellant out of the difficulties her case was then in, arising entirely from two different ways in which the marriage had been presented. In the circumstances, I consider this submission mere speculation irrelevant to any alleged error of law.

25. As to a change or addition of grounds to that relied on in the RFR, I find that there is nothing material in this submission. It is clear that the appellant's factual claim was not accepted. It is true that the part relevant to this error of law consideration was a matter the Secretary of State considered as to whether to accord her the benefit of the doubt. Mr Holt also submitted that the Secretary of State relied solely on s8 matters to refuse the claim, and thus the approach was unlawful. However, there is an overlap between some of the s8 considerations and those under paragraph 339L. Because of the delay in bringing the asylum claim, the appellant was not accorded the benefit of the doubt; that is clearly a credibility issue without needing s8 findings.

26. I note that 339L(v) was also relied on, that her general credibility had not been established, and thus that aspect of her claim was not accepted. Perhaps that part of the decision of the Secretary of State could have been better phrased, but I reject the submission that the decision was unlawful and I do not accept it was material to the outcome of the appeal.

27. It follows that I also reject the submission that credibility had not been relied on by the Secretary of State and that a Rule 24(2) statement was required.

Conclusion & Decision

28. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014. Given the circumstances, I continue the anonymity order.

Fee Award *Note: this is not part of the determination.*

I make no fee award.

Reasons: No fee is payable and thus there can be no fee award.

Signed

Deputy Upper Tribunal Judge Pickup