



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

Appeal Number: PA/09400/2016

THE IMMIGRATION ACTS

**Heard at Royal Courts of Justice
On 27 June 2017**

**Oral Decision & Reasons
Promulgated
On 27 October 2017**

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

**[M K B]
(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Fouladrand of MAAS

For the Respondent: Ms K. Pal, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan who was born on [] 1940. So much is not controversial. She had made a claim which was determined in a determination promulgated on 24 June 2014 following a hearing at Hatton Cross on 14 March 2014 before First-tier Tribunal Judge Khawar. In

that initial claim she had sought leave to remain or entry clearance as an adult dependant relative under Appendix FM of the Immigration Rules. In addition she had sought to rely upon Article 8 of the ECHR in its widest terms. The matter was listed for an oral hearing and in the course of the hearing the judge heard evidence from her grandson [HSB] who had adopted a witness statement giving additional evidence.

2. The brief summary was recorded by Judge Khawar at paragraph 6. The appellant was then 74 years old, a citizen of Afghanistan, settled in India, who had applied for entry clearance as the adult dependent relative of her grandson. She had maintained that she was a widow living alone in India at the same address in New Delhi since 2006. She claimed that she lived alone and was totally dependent upon her son and grandson due to her age and health. She maintained that she was assisted by a maid who attended during the day to cook and clean for her but she needed more care than could be provided by such a maid and she needed 24 hours a day care which was not provided to her.
3. She advanced her claim in 2014 on the basis that as a result of her age, illness or disability she required long term personal care to perform everyday daily tasks. There was no relevant information or evidence before the judge to establish, despite her age, the level of care that she needed or what illnesses she actually suffered from. In those circumstances and in the course of the determination the First-tier Tribunal Judge dismissed the appeal under the Immigration Rules and under Article 8 of the ECHR. In particular he found that she had failed to establish that she required long term personal care to perform her everyday tasks.
4. That was the basis upon which the claim was advanced in 2014.
5. It was a very different claim that was advanced which became the subject of the appeal relevant to me which was determined by First-tier Tribunal Judge N.M.K. Lawrence in a determination that was promulgated on 14 March 2017 following a hearing at Hatton Cross on 21 February 2017. In that case she had given an entirely different version of events. She had claimed that she was kidnapped on two occasions in Afghanistan by Afghan men. The first happened in 2011. She alleged that the men asked her to change her faith, promising her food and clothing if she converted to Islam. The appellant refused. The second kidnap was in 2015. In that case she said it was the Mujahideen who kidnapped her. They too asked her to change her religion and once again she refused, so it was on that basis that her family in the United Kingdom made arrangements for her to leave Afghanistan and enter the United Kingdom illegally.
6. The claim that was advanced and which was the subject matter of the appeal before First-tier Tribunal Judge Lawrence was a complete cock-and-bull story. It was a fabrication and it was admitted to be a fabrication in the course of the hearing. The findings that were made in 2012 were put to [MB] who gave evidence and, in particular, the allegation that the

appellant said that she had been living in India since 2006. The judge records in paragraph 10:

“This was put to [MB] during his oral evidence. He confirmed the 2012 application was indeed made. He said his mother is too old to live alone and that the UK Government owes it to her to look after her. He said he and his siblings tried to bring the appellant lawfully to the UK but it was refused. They said they have no other choice. It was put to him that he and his siblings made arrangements to bring her to the UK. He denied it. He said the first time he knew his mother was in the UK was when the Home Office contacted him. I do not accept this. In my view [MB] and his siblings, frustrated by the fact that the appellant did not meet the requirements of the Immigration Rules, caused her to travel to the UK clandestinely. I find the appellant has lived in India since 2006 and therefore I find the basis of the asylum application is without foundation. It is a pack of lies concocted by the appellant’s children living in the UK”.

7. Those findings of fact made by Judge Lawrence are undoubtedly correct. They were conceded by [MB] in the evidence that he gave.
8. Surprisingly, therefore, the appellant has appealed on the basis that the judge did not give due consideration to her claim that she was a single woman and that she was at risk of harm by that fact alone and that it was therefore wrong for the judge to omit to mention that part of the claim and to consider her human rights claim on the basis of that material.
9. In my judgment that submission is misconceived and ill-founded. The judge was not required to advance a case and then consider it and make a decision upon it when it was not advanced by the appellant or by [MB]. The judge was there to determine the case that was put forward by the appellant and he did so affirmatively and correctly. The true case namely that she lives in India was not a case which was advanced. Consequently no consideration was necessary as to whether she was at risk of asylum in India. That was not the case that she put forward. Nor was it a case that she put forward that it would be a breach of her human rights to be returned to India because of the social and domestic situation that existed there. Her case was that she was at risk of harm as a result of an entirely concocted account and that, having refused that asylum claim for good cause, there was nothing else that was advanced by the appellant.
10. It is not for the judge to concoct a hypothetical case which was never advanced that as a 77 year old woman she would be at risk. If that is a claim that the appellant wishes to make, she cannot now legitimately make it in relation to Afghanistan, since she herself has said that she has not been living there since 2006. She never sought to revamp her case and advance her claim on the basis of the true facts. That is a claim which she is still entitled to advance and to seek the decision of the Secretary of State but it was not a claim that was before the Upper Tribunal and the judge was not required to speculate on what it might be. She may have insuperable difficulties in making out such a case, since her credibility is at

such a low ebb, but she cannot be prevented from doing so, albeit not at public expense.

11. Asylum claims and human rights claims are fact sensitive. They require the foundation of credible evidence as to the true circumstances in which somebody is living and the risks that they face were they to be returned. That simply does not admit a hypothetical claim that was never advanced and in these circumstances I am satisfied that the asylum claim was properly dismissed. If there is to be a human rights claim it has to be made on the basis that the judge in 2014 had made sustainable findings of fact that her removal would not violate her human rights. That decision was never appealed. It remains the starting point for any further application. I am not prepared to expand the circumstances in which the Tribunal is required to give consideration to such a claim. That is for the appellant to make, based on truthful and credible evidence.

DECISION

The First-tier Tribunal made no error on a point of law and the decision dismissing the appellant's appeal shall stand.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL