



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05229/2017

THE IMMIGRATION ACTS

Heard at Field House
On 14 February 2018

Decision & Reasons Promulgated
On 7 March 2018

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

R B
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent.

Representation:

For the appellant: Mr C. Talacchi, Counsel instructed by City Heights Solicitors
For the respondent: Ms A. Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed against the respondent's decision to refuse a protection claim. In a decision promulgated on 12 July 2017 First-tier Tribunal Judge R.L. Walker ("the judge") dismissed the appeal.
2. The appellant appealed against the First-tier Tribunal decision on the following grounds.
 - (i) The First-tier Tribunal failed to consider the appellant's evidence about how the asylum interview was conducted.
 - (ii) The First-tier Tribunal failed to consider relevant matters including the fact that the appellant's mother is a "mental patient" in Bangladesh and her father is deceased.
 - (iii) The judge failed to give adequate reasons to explain why he did not find the appellant's account to be credible.
3. The Upper Tribunal granted permission to appeal in an order dated 21 November 2017 in the following qualified terms:

"Given that neither the appellant in her oral evidence nor her Counsel raised any concerns about the asylum interviews I see no force in the contention that the decision made by the respondent was procedurally unfair.

However, whilst the judge's stated reasons for not finding the appellant's evidence that she had no family and nobody to return to in Bangladesh credible appear unexceptionable, the judge did not consider whether the appellant should have been treated as a vulnerable witness under the 2010 Joint Presidential Guidance Note, even though the Competent Authority had found that she was [not] a victim of trafficking. It is arguable that may have had a material impact on the judge's assessment."

Decision and reasons

Legal framework & guidance

4. The Child, Vulnerable Adult and Sensitive Appellant Guidance (Presidential Guidance Note No.2 of 2010) sets out guidance on dealing with vulnerable witnesses in the Tribunal. The guidance was developed to assist judges to identify vulnerable witnesses and to consider the nature and extent of any vulnerability as part of their assessment of the evidence. Paragraph 3 of the guidance states:

"The consequences of such vulnerability differ according to the degree to which an individual is affected. It is a matter for you to determine the extent of an identified vulnerability, the effect on the quality of the evidence and the weight to be placed on such vulnerability in assessing the evidence before you, taking into account the evidence as a whole."

5. The guidance sets out several potential factors that might lead a judge to identify a person as a vulnerable witness, which might include (i) mental health problems; (ii) social or learning difficulties; (iii) religious beliefs or practices, sexual orientation, ethnic social and cultural background; (iv) domestic and employment circumstances; or (v) a physical disability or impairment that might affect the giving of evidence. The guidance goes on to identify reasonable adjustments that might need to be made to the way in which the hearing is conducted depending on the nature and extent of a person's vulnerability.
6. In *AM (Afghanistan) v SSHD* [2017] EWCA Civ the Court of Appeal gave guidance on the general approach to be adopted in law and practice for the First-tier Tribunal and Upper Tribunal to fairly determine "claims for asylum from children, young people and other incapacitated or vulnerable persons whose ability to effectively participate in proceedings may be limited." The Court of Appeal considered several pieces of guidance from various sources, including the Child, Vulnerable Adult and Sensitive Appellant Guidance. The Court of Appeal was required to determine whether the Tribunal had power to appoint a litigation friend. It concluded that the procedure rules were sufficiently flexible to do so. However, in considering the various pieces of guidance and case law on procedural fairness, the Court of Appeal cautioned against "an over elaborate interpretation of the Guidance Note."

Background

7. The appellant entered the UK with entry clearance as a visitor on 28 July 2012. The appellant was 14 years old. She entered the UK with her mother and elder sister. She says that, following her father's death in 2009, her mother suffered from depression and mental health problems. They stayed with the appellant's maternal cousin, Mr S, for four weeks before staying with other maternal cousins in London. The appellant says that her mother and sister returned to Bangladesh in 2012 abandoning her here. The appellant says that she stayed with her mother's maternal cousins until August 2014, when she returned to Mr S's home. In September 2014, an application was made on her behalf for leave to remain on human rights grounds. The application was refused with no right of appeal on 23 December 2014.
8. On 13 May 2015, aged 16 years old, the appellant made a protection claim on the ground that she would be at risk on return to Bangladesh as a lone woman. The interview records indicate that the appellant was interviewed under the procedures for child asylum seekers on 29 October 2015. A legal representative was present at the interview although the record indicates that he was late. It is unclear whether the interview began without him. However, Mr S is recorded as the responsible adult. It is reasonable to infer that he attended the interview with the appellant and was with her throughout the interview.
9. After the asylum interview the respondent referred the case to the National Referral Mechanism (NRM) to investigate whether the appellant might be a potential victim

of trafficking. The Competent Authority found that there were 'reasonable grounds' to consider that she might be a victim of trafficking, but in the 'conclusive grounds' decision, concluded that the appellant was not a victim of trafficking.

10. The respondent refused the protection claim in a decision dated 23 May 2017. It is unclear why it took so long to take a decision in relation to a child asylum seeker. I note that by the time the decision was made the appellant was 18 years old. The respondent noted the background to the case and the evidence that had been produced by her relatives relating to her mother's medical treatment in Bangladesh, as well as her father's death certificate. The respondent noted that the evidence indicated that she continued to have family members in Bangladesh and that she would not return as a lone woman.

Findings


11. The appellant was 18 years old at the date of the First-tier Tribunal hearing in July 2017. Her evidence remained the same as the Home Office interview i.e. that she had no contact with family members in Bangladesh or knowledge of their whereabouts. Mr S also gave evidence.
12. No evidence has been produced to indicate that the appellant had a particular vulnerability which needed to be catered for by way of special measures at the hearing. The fact that the appellant was a child when she entered the UK meant that her evidence would need to be considered in that context. However, she was 18 years old at the date of the hearing. There is no evidence to suggest that she had any other vulnerabilities, apart from her relatively young age, which would need to be addressed by way of special arrangements. There was no evidence to indicate that the appellant suffered past trauma or abuse. The Competent Authority concluded that there was insufficient evidence to show that she was a victim of trafficking or modern slavery. There was no evidence of mental health problems and no evidence of any learning or other cognitive difficulties.
13. The fact that the appellant was a young woman who was reliant on a male family member for support in the UK was a matter that might explain why she had little knowledge of the current situation of other family members in Bangladesh. To this extent the judge should have taken into account the fact that Mr S was the person who contacted relatives in Bangladesh and who obtained evidence on her behalf. Perhaps the appellant was aware of these efforts, but it is at least plausible that she may not have been told much about the circumstances of her remaining family members in Bangladesh.
14. In light of her young age, her gender and reliance of male relatives, the judge could and should have placed the credibility of the appellant's evidence in the correct cultural context. However, any perceived error in this respect was not material to the outcome of the appeal. Even if the judge failed to consider those matters as part

of his assessment of the credibility of the appellant's evidence, clearly it was open to him to take into account the evidence given by Mr S.

15. Although the appellant's evidence in interview suggested that she did not want to live with her mother, and may have refused to return to Bangladesh with her, there is no evidence to suggest that the appellant was harmed or abused by her mother in the past. No doubt it was difficult dealing with her mother's mental health issues, but very little detail was provided about the appellant's life in Bangladesh before coming to the UK. The evidence before the judge indicated, whether the appellant knew it or not, that she still had relatives in Bangladesh to whom she might be able to turn to for support. The appellant has a mother and older sister in Bangladesh. The evidence indicated that there was a male relative who was supporting the appellant's mother. There was no evidence to show that Mr A would not be willing to provide the appellant with similar support. Mr S's evidence was that he contacted "a number of family members in Bangladesh" to find out about her mother's situation. The evidence before the First-tier Tribunal indicated a wider family network in Bangladesh.
16. Nothing in the arguments put forward at the hearing persuaded me that any vulnerability that the appellant might have had as a young adult woman impaired her understanding of the proceedings or her ability to give evidence. Although the judge should have taken into account the appellant's young age, her gender and the cultural context in assessing whether it was credible that she did not know the current circumstances of family members in Bangladesh, any error was not material to the outcome of the appeal. It seems that Mr S was open in stating his knowledge of the family circumstances. The judge was entitled to rely on that evidence even if the appellant was genuinely unaware of those circumstances.
17. It was open to the judge to take into account the fact that the appellant's mother and two sisters lived in Bangladesh. He took into account the fact that, even if the appellant's mother was too unwell to support the appellant, there were other relatives, such as Mr A, who might be able to do so. Given the support that Mr S has provided to the appellant in the UK, no doubt he would continue to support her as best he can if she returned to Bangladesh with the assistance of their extended family members.
18. For the reasons given above I conclude that the First-tier Tribunal decision did not involve the making of a material error of law. The decision shall stand.

DECISION

The First-tier Tribunal decision did not involve the making of an error of law
The decision shall stand

Signed 
Upper Tribunal Judge Canavan

Date 06 March 2018