



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/09316/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Columbus House, Decision & Reasons
Newport On 15 February 2018 Promulgated
On 13 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

**AV
(ANONYMITY DIRECTION MADE)**

Appellant

And

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent**

Representation

For the Appellant: Mr O Manley, Counsel instructed by Duncan Lewis & Co

For the Respondent: Mr I Richards, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Fowell in which he dismissed the appeal of the Appellant, a citizen of Albania, against the Secretary of State's decision to refuse asylum and issue removal directions.
2. The application under appeal was refused on 19 August 2016. The Appellant exercised her right of appeal to the First-tier

Tribunal. This is the appeal which came before Judge Fowell on 2 June 2017 and was dismissed. The Appellant applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge P J M Hollingsworth on 22 September 2017 in the following terms

It is arguable that the Judge has placed misconstruction upon the expert report of Dr Jayawickrama in respect of the risk of suicide and has arguably misconstrued the significance of the cut to the Appellant's wrists. It is arguable that the Judge has made insufficient allowance for the Appellant being a vulnerable witness. Although the Judge at paragraph 48 of the decision refers to the need to take account of this vulnerability and the difficulty which she may have experienced in recalling events and explaining them. In the next paragraph the Judge states that the Judge found her explanations difficult to follow.

It is arguable that it is unclear to what extent the Judge has made allowances for the factors referred to at paragraph 48, in setting out the analysis of the evidence received at the hearing. At paragraph 51 the Judge states that the Judge appreciated the Appellant may have real difficulties in recalling for example the sequence of events but these were serious discrepancies. The Judge continues by stating that the Judge struggled throughout to get any real understanding as to why the Appellant feared the family would actually harm her.

It is arguable that the Judge has failed to set out to a sufficient degree the extent to which allowance has been made for the vulnerability of the Appellant as a witness and failed to take account of the extent of the objective evidence, in relation to the matters raised in the permission application, so far as Kanun law is concerned. It is arguable that the Judge has failed to delineate with sufficient clarity the nexus between the Appellant's vulnerability and the circumstances of the claim.

It is arguable that the Judge has not given sufficient weight to the references in the report of Dr Jayawickrama to the specific references as referred to in the permission application to threats to kill.

Whilst the Judge at paragraph 51 of the decision has referred to struggling throughout to gain any real understanding as to why the Appellant feared the family would actually harm her and quotes paragraph 37 of Dr Jayawickrama's report, it is arguable that the essence of the matter quoted at paragraph 37 of that report raises the question of the application of Kanun law, the Appellant's degree of understanding of the application of that law and the appreciation or otherwise of the Appellant subjectively of the implementation of it. It is arguable that the distinction drawn at paragraph 53 of the decision is affected by the relevant parts of Dr Jayawickrama's report dealing with threats to kill. At paragraph 55 of the decision the Judge states that the Judge had to conclude that the Appellant had altogether misrepresented this threat from her family and in those circumstances the Judge could not regard her as a credible witness.

It is arguable that the references in Dr Jayawickrama's report to threats to kill are material in this context. At paragraph 38 of the report Dr Jayawickrama the author states that she described how the family have stated they will kill both of them if they returned to Albania and describes living in fear and states that she does not wish to return to Albania. At paragraph 72 of the same report Dr Jayawickrama states her history states that she was perceived by her own family as someone who brought shame to her own family, disowned her and made threats to harm her i.e. kill her. It is likely that feelings of loneliness and fear and helplessness have affected her mental state over this period of time.

It is arguable that the Judge has set out an insufficient evaluation of the basis of Dr Jayawickrama's conclusion with regard to suicide risk. At paragraph 80 of the decision the Judge states that it seemed to the Judge in the circumstances at the basis on which Dr Jayawickrama formed his view about the risk of suicide was entirely unsound.

It is arguable that the factors referred to in Dr Jayawickrama's report as identified in the permission application do not lead to the conclusion of entire unsoundness or that moderate depressive illness does not form the backcloth to attempted suicide.

3. By a rule 24 response dated 8 November 2017 the Respondent opposed the appeal arguing that the Judge directed himself appropriately and had regard to the presidential guidance on dealing with vulnerable witnesses and bore the Appellant's vulnerability in mind when reaching his conclusions on credibility. It was also submitted that the Judge gave full consideration to the issue of claimed suicide attempts.

Background

4. The history of this appeal is detailed above. The facts, not challenged, are that the Appellant is a citizen of Albania born on 27 May 1985. The Appellant left Albania in April 2015 and travelled via Belgium to the United Kingdom arriving clandestinely on 20 April 2015. On 7 January 2016 she went to Ilford police station to report her partner for domestic violence and was detained as an illegal entrant. Following her detention she claimed asylum. The basis of her claim was that she faced persecution in Albania from her family as they disapproved of her relationship and also from her partner's family who had previously mistreated her. She said that the state would be unable or unwilling to protect her. The Appellant also claimed that she was suffering from depression and had attempted to commit suicide. The Respondent did not accept that the Appellant's fear was genuine or that her account was truthful or that she was currently suffering from any medical condition.

5. In dismissing the appeal, the Judge found that the Appellant was not a credible witness (paragraph 55) and that the Appellant had never genuinely attempted suicide.

Submissions

6. At the hearing before me Mr Richards appeared to represent the Secretary of State and Mr Manley represented the Appellant. Mr Manley said that there was one critical issue being the first point raised at paragraph 3 of the grounds referring to paragraph 49 of the decision. The Judge failed to correctly record or understand the evidence given. At paragraph 49 the Judge incorrectly records the Appellant's evidence being that her father said that the wedding would have to take place in United Kingdom. Mr Manley said that as soon as this evidence had been given at the hearing the interpreter clarified that he had made a mistake and that the correct translation of the Appellant's evidence was that her father had wanted the wedding to take place in Albania and not in the United Kingdom.
7. On behalf of the Respondent Mr Richards said that he had read the Presenting Officer's note from the hearing and this note agreed with Mr Manley's submission. It was clear that the Judge had mistaken the evidence and as this paragraph was the foundation of the adverse credibility finding Mr Richards accepted that the decision was unsafe. Mr Richards helpfully added that there were other errors in the decision for example the finding that there was no mention about threats to kill which was clearly incorrect.
8. I said that the appeal would be allowed and as the errors found and accepted related to the credibility of the Appellant's account it would be appropriate to remit to the first-tier Tribunal for hearing afresh.

Decision

9. The grounds of appeal to the Upper Tribunal are detailed and the grant of permission sets out the arguable errors of law very clearly. At the hearing before me it was conceded on behalf of the Respondent that the Judge had fallen into error. The clearest error was that the judge, at paragraph 49 of his decision, misrecorded the evidence and based his adverse credibility finding, at least partially, upon that erroneous record. Both the Appellant's representative and the Respondent's representative had clear notes of the evidence given at the first-tier Tribunal hearing which conflicted with the Judge's record.

10. It is unnecessary to go into any further detail since this is a matter which will need to be considered by the First-tier Tribunal at a de novo hearing. However, it is perhaps important to record that it is important for judges when considering the Presidential Guidance relating to vulnerable witnesses to not only refer to that guidance in deciding whether a witness is vulnerable but where vulnerability is accepted to also record whether the order and manner in which the Appellant gave his or her evidence were affected by his or her vulnerability.

Summary

11. The decision of the First-tier Tribunal involved the making of a material error of law. I allow the Appellant's appeal.
12. The error of law identified goes to the heart of the credibility finding made and in these circumstances I remit the matter to the First-tier Tribunal for hearing de novo.

Signed:

Date: 9 March 2018

A handwritten signature in black ink, appearing to read 'J F W Phillips', written in a cursive style.

**J F W Phillips
Deputy Judge of the Upper Tribunal**