



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/09638/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 8<sup>th</sup> August 2018

Decision & Reasons Promulgated  
On 30<sup>th</sup> August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

R.R.

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Miss Fijiwala, Senior Home Office Presenting Officer

For the Respondent: Mr Waheed, Counsel

**Anonymity**

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

An anonymity direction is made. As a protection claim, it is appropriate to do so.

**DECISION AND REASONS**

1. This is the appeal of the Secretary of State against the decision of the First-tier Tribunal (Judge Gaskell) allowing the appeal of Miss R.R. against the Secretary of State's refusal to grant her asylum/humanitarian protection.

2. For the sake of clarity I shall throughout this decision refer to Miss R.R. as “the Appellant” and to the Secretary of State as “the Respondent” thereby reflecting their respective positions before the First-tier Tribunal.

### **Background**

3. The Appellant is a citizen of India born 21<sup>st</sup> November 1984. She arrived in the UK in January 2011 with leave as a Tier 4 Student. She was accompanied by her husband. She and her husband separated soon after her arrival. The reason for their separation was because of her husband’s abusive behaviour towards her. In 2014 her husband was convicted and imprisoned in the UK for an offence of causing death by dangerous driving. He was subsequently deported to India. By 7<sup>th</sup> October 2016 the Appellant obtained a divorce from him.
4. She claimed that following the separation and divorce, her husband and his family harassed her by sending her text messages, threatening her that if she returned to India she would be killed. The Appellant’s parents disowned her saying that the divorce had brought shame upon the family.
5. In 2017, following a refusal of an application made for leave to remain based on her private and family life, the Appellant applied for asylum. The asylum application was refused and it is that refusal which forms the basis of the instant appeal before me.

### **The FtT Decision**

6. The Appellant appealed the Respondent’s refusal of her protection claim and the appeal came before First-tier Tribunal Judge Gaskell. It has always been the Respondent’s case that the Appellant was not entitled to asylum because she could not establish a case within the terms of the Refugee Convention. In other words there was no Convention reason for granting her asylum. Equally it was the Respondent’s case that she was not entitled to humanitarian protection because there was sufficiency of protection available to her in India, bearing in mind that she is educated to a high level (she has two masters degrees, including one in marketing and innovation) and there was no evidence to show that internal relocation was not a viable option in her particular circumstances. It was accepted that she has been suffering from depression, but there was no evidence that she would be unable to access or avail herself of the medical facilities available in India.
7. The FtTJ in his decision spent several lengthy paragraphs from [9] to [44], citing case law, the Immigration Rules, the Appellant’s case and the Respondent’s case. In addition there is a note of the evidence which was before him at the hearing.
8. His findings which start at [45] under a heading “**Discussion and Conclusions**” are confined to considering the issue of internal relocation. His discussion is essentially confined to ten lines contained in [47]. It amounts to a conclusion that the Appellant is “unworldly” and that it is clear from the country guidance that she will be viewed with suspicion by potential landlords and employers in India, particularly “because she is not merely single but divorced.” The judge makes further conclusions that “she

clearly has very fragile mental health” and “it would be simply impossible for her to establish an independent life away from her home area without any support.”

9. The judge then concludes in [48]:

“Accordingly, and for these reasons, I find that the appellant is a refugee; she is entitled to asylum; and humanitarian protection; and her enforced return to India would contravene her rights under Articles 2 and 3 ECHR.”

He followed this up at [49]:

“In the light of the above finding, it has been unnecessary for me to consider the appellant’s claim pursuant to article ECHR in detail. But it follows from my findings that, in my judgement, there are very significant obstacles in her return to India (Paragraph 276ADE(vi) of the Rules) and she would be entitled to remain on Article 8 Grounds.”

### **Onward Appeal**

10. The Secretary of State sought and was granted permission to appeal. The relevant parts of the grant of permission read as follows:

“The grounds assert that the Judge failed to give adequate reasons on material matters and that the Judge’s consideration of the viability of internal relocation is inadequate.

Between [9] and [35] the Judge sets out the relevant law. Between [27] and [36] the Judge sets out the appellant’s position. Between [37] and [39] the Judge summarises the respondent’s position before summarising the evidence between [40] and [44].

Between [45] and [49] the Judge sets out conclusions. It is arguable that the decision contains neither an analysis of the evidence nor reasons for the conclusions reached.”

11. Thus the matter comes before me to determine whether the decision of the First-tier Tribunal contains such error of law that it must be set aside and remade.

### **Error of Law Hearing**

12. Before me Miss Fijiwala appeared for the Secretary of State and Mr Waheed for the Appellant. Miss Fijiwala relied upon the grounds seeking permission. She submitted that as the grant of permission points out, despite the length of the decision, the judge has simply failed to demonstrate that he has engaged with the evidence as set out in the Respondent’s case. She submitted that he has made a series of statements at [47] none of which can be said to be properly reasoned. Further the judge’s decision at [48] wherein he makes a finding that the Appellant is a refugee who is entitled to asylum and to humanitarian protection, is unsustainable. There is no finding, nor any analysis, of which part of the Refugee Convention is said to apply to the Appellant’s case. This illustrates the judge’s failure to engage properly with the evidence before him. It has always been the Respondent’s case that the Refugee convention is not even engaged in this appeal.

13. Further the judge makes a sweeping statement that the Appellant's enforced return to India would contravene her rights under Articles 2 and 3, ECHR and again there is no analysis showing how that conclusion has been reached. Indeed there is no evidential basis to show that internal relocation in India would result in the Appellant facing extreme violence or death. The decision is wholly unsustainable and should be set aside and remade.
14. Mr Waheed in response relied on a skeleton argument which he handed up. He referred to [47] and said that the judge had made a finding that the Appellant is unworldly. She has fragile mental health as evidenced by the medical evidence produced. The judge had reached a conclusion that it would be simply impossible for her to establish an independent life away from her home area without any support. Those findings were open to the judge to make. The decision should therefore stand. At the end of submissions I reserved my decision which I now give with reasons.

### **Consideration**

15. The judge's decision contains 49 paragraphs. As the grant of permission indicates it is not until [45] to [49] that the judge sets out what amounts to a series of conclusions. In reaching those conclusions, nowhere do I see any clear reasoned findings of fact. Nor do I see any analysis showing how those conclusions are reached.
16. I find, despite the amount of evidence that was placed before the judge and despite setting out the background to the application and the law over numerous paragraphs, the judge's conclusions are contained in around ten sentences in [47]. Nowhere do I see that the judge has engaged properly with the Respondent's case such as to demonstrate that he has looked at the evidence in the round as he is tasked to do.
17. It has always been the Respondent's case that the Appellant does not come within the terms of the Refugee Convention. At [48] the judge allows the appeal under the Refugee Convention but gives no indication as to which part of that Convention it is said she meets.
18. Likewise I see no evidential basis of fact-finding which would merit allowing the appeal under Articles 2 and 3, ECHR. Although I have taken heed of Mr Waheed's submissions, they failed to satisfy these points.
19. I find therefore in short that the decision is inadequately reasoned and is therefore tainted by material errors of law. A proper fact-finding exercise may result in a different outcome to this appeal and I find therefore that I must set aside the decision promulgated on 23<sup>rd</sup> May 2018. The decision is set aside in its entirety. There will need to be a fresh hearing and it is right on account of the amount of judicial fact finding required that this hearing take place in the First-tier Tribunal. The appeal before the First-tier Tribunal should be heard by a judge other than Judge Gaskell.

**Notice of Decision**

The Secretary of State's appeal is allowed to the extent that the decision of the First-tier Tribunal promulgated on 23<sup>rd</sup> May 2018 is set aside for material error. The decision is remitted to the First-tier Tribunal (not Judge Gaskell) for that Tribunal to remake the decision.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

C E Roberts

Date

20 August 2018

Deputy Upper Tribunal Judge Roberts